TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 588. ~~288~~ 31

PULLMAN'S PALACE CAR COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED SEPTEMBER 12, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Pullman's Palace Car Company, plaintiff in error, and The Commonwealth of Pennsylvania, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause
2 of the Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twelfth day of November, in the year of our Lord one thousand eight hundred and eighty-four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States

Allowed by—
JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

[Endorsed:] Original. No. 35. Pullman's Palace Car Company *vs.* Commonwealth of Pennsylvania. Writ of error. Filed in S. C. of Pa. Dec. 5th, 1884.

3 The United States of America to the Commonwealth of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the office of the prothonotary of the supreme court of Pennsylvania for the middle district, wherein Pullman's Palace Car Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this twelfth day of November, in the year of our Lord one thousand eight hundred and eighty-four.

JOSEPH P. BRADLEY,
Associate Justice Supreme Court of the United States.

4 STATE OF PENNSYLVANIA, *ss:*

On this fifth day of December, in the year of our Lord one thousand eight hundred and eighty-four, personally appeared A. C. Stamm before me, the subscriber, prothonotary of the supreme court of Pennsylvania for the middle district thereof, and makes oath that he delivered a true copy of the within citation to Robert E. Pattison, Governor of the Commonwealth of Pennsylvania, and also delivered a true copy of the same to Lewis C. Cassidy, attorney general of the Commonwealth of Pennsylvania.

A. C. STAMM.

Sworn and subscribed before me the day and year aforesaid.

——— ———.

[Endorsed:] Pullman Palace Car Co. *vs.* Commonwealth of Pennsylvania. Citation. Filed in S. C. of Pa. Dec. 5th, 1884.

5 The answer of the justices of the supreme court of the State of Pennsylvania to the writ of error from the Supreme Court of the United States, hereunto annexed, as follows, to wit:

Appearance. Docket Entry.

August Term, A. D 1881.

Among the records of the court of common pleas of Dauphin county, Pa., to No. 36, August term, 1881, it is contained as follows, to wit:

Appeal from the Settlement of the Auditor General and State Treasurer.

COMMONWEALTH OF PENNSYLVANIA

v.

PULLMAN PALACE CAR COMPANY.

Cassidy, Olmstead.

1881, May 2.—Appeal and specification of objections filed.
1881, May 10.—Bond approved and filed.
1882, Jan. 9.—Narr. and copy of account filed.
1882, Jan. 14.—Defendant pleads "*nil debet*"

MARCH ADJ. COURT, 1883. J. L.

1883, March 22.—Agreement filed to try without the inter-
6 vention of a jury under the act of 22 April, 1874.

1883, May 11.—Opinion and finding of the court filed deciding that there is due the Commonwealth by defendant the sum of twenty-one thousand one hundred and nine $\frac{63}{100}$ dollars ($21,109.63), exit notice.

1883, May 21.—Stenographer's notes filed.

1883, May 21.—Exceptions filed. Same day exceptions overruled. See opinion filed. Same day judgment on the finding of the court.

1884, May 24.—Writ of error from the Supreme Court received and filed

[Seal of the Court of Common Pleas of Dauphin County.]

E. B. MITCHELL,
Prothonotary.

Account.

7 Pullman's Palace Car Company in account with the Commonwealth of Pennsylvania. DR.

For tax on capital stock, per act of May 1st, 1868; April 24, 1874 (section 9); March 20, 1877, and June 7, 1879, for the years ending on the first Mondays of November, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, and 1880, as per reports, herewith filed, and estimates of auditor general and State treasurer. Incorporated July 15, 1867. This company was called upon by the auditor general to report its capital stock and dividends for the years included in this settlement, and to furnish other information that would enable the accounting department to arrive at a just and equitable settlement of the taxes due from it to the Commonwealth.

8 The company did not furnish the information requested, and therefore the auditor general and State treasurer have estimated an account from such reasonable data and information as they have been enabled to obtain, as follows:

1870.

Estimated dividend, 8% on capital stock of $5,826,200; estimated proportion of capital stock taxable for Penna., $557,976.70.		
Tax, 4 mills (½ mill for each one per cent. of dividend)	2,231 90	
Int. from Feb. 15, 1871, to Feb. 15, 1878	1,874 79	
Penalty for failure to report	223 19	
		4,329 88

1871.

Estimated dividend, 8% on capital stock of $5,826,200; estimated proportion of capital taxable for Penna., $557,976.70.		
Tax, 4 mills (½ mill for each one per cent. of dividend)	2,231 90	
9 Int. from Feb. 15, 1871, to Feb. 15, 1878	1,606 96	
Penalty for failure to report, &c.	223 19	
		4,062 05

1872.

Estimated dividend, 8% on capital stock, $5,826,200; estimated proportion taxable for Penna., $557,976.70.		
Tax, 4 mills (½ mill, &c.)	2,231 90	
Int. from Feb. 15, 1873, to Feb. 15, 1879	1,339 14	
Penalty for failure to report	223 19	
		3,994 23

1873.

Estimated dividend, 8% on capital stock, $5,826,200; estimated proportion taxable for Penna., $557,976.70.		
Tax, 4 mills (½ mill, &c.)	2,231 90	
Int. from Feb. 15, 1874, to Feb. 15, 1878	1,071 31	
Penalty for failure to report	223 19	
		3,526 40

1874.

Estimated dividends, 8% on capital stock, $5,826,200; estimated proportion taxable for Penna., $557,976.70.		
Taxable rate, 4 mills (½ mill to April 24, 1874)	$1,039 51	
Taxable rate, 7⅕ mills from 24 April, 1874	2,146 29	
	3,185 80	
10 Int. from Feb. 15, 1875, to Feb. 15, 1878	1,146 88	
Penalty for failure to report	318 58	
		4,651 26

1875.

Estimated dividend, 8% on capital stock, $5,826,200; estimated proportion taxable for Penna., $557,976.70.		
Tax rate, $7\frac{2}{10}$ mills ($\frac{9}{10}$ of a mill, &c.)	4,017 43	
Int. from Feb. 15, 1876, to Feb. 15, 1878	964 18	
Penalty for failure to report	401 74	
		5,383 35

1876.

Estimated dividend, 8% on capital stock, $5,938,200; estimated proportion taxable for Penna., $569,972.08.		
Tax at rate of $7\frac{2}{10}$ mills to March 20, 1877	1,506 70	
Tax at rate of 4 mills from March 20, 1877	1,436 64	
Penalty for failure to report	294 33	
		3,237 67

1878.

Estimated dividend, 8% on capital stock, $5,938,200; estimated proportion taxable for Penna., $612,953.44.		
Tax, 4 mills ($\frac{1}{2}$ mill, &c.)	2,451 81	
		2,451 81

11 1879.

Estimated dividend, 8% on capital stock, $5,938,200; estimated proportion taxable for Penna., $609,899.54.		
Tax, 4 mills.		

1880.

Estimated dividend, 8% on capital stock, $5,938,200; estimated proportion taxable for Penna., $746,720.02.		
Tax, 4 mills ($\frac{1}{2}$ mill, &c.)	2,986 88	
		2,986 88
Due Commonwealth		41,869 76

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *Feb* 28, 1881.

Settled and entered.

WILLIAM H. SCHELL,
Solicitor General.

TREASURY DEPARTMENT, PA.,
HARRISBURG, *Feb.* 28, 1881.

Approved:

SAMUEL BUTLER,
State Treasurer.

Appeal and Specification of Objections.

In the matter of the account settled by the auditor general and State treasurer on the 28th day of February, A. D. 1881, for
12 $41,869.76, taxes on capital stock for the years 1870 to 1880, both inclusive, with interest and penalties claimed to be due from Pullman's Palace Car Company unto the Commonwealth of Pennsylvania—

Having received notice of said settlement at its office in Chicago, Illinois, upon the 3rd day of March, A. D. 1881, Pullman's Palace Car Company hereby appeals from said settlement of account to the court of common pleas of Dauphin county, and, together with a copy of the account, files the following specification of objections thereto:

Agreeably to the provisions of the act of Assembly in such case made and provided, it is objected that the said settlement is erroneous and illegal, because—

1. Pullman's Palace Car Company is not a corporation of the State of Pennsylvania, but is a corporation of the State of Illinois. No part of its capital stock is, or was during any of the years for
13 which a tax is charged, invested in the State of Pennsylvania.

The Central Transportation Company is a corporation of the State of Pennsylvania, owning a large number of sleeping and parlor coaches and having contracts for their exclusive use upon the more important railroads in Pennsylvania as well as upon some lines of railway in other States.

Pullman's Palace Car Company also own sleeping and parlor coaches and has contracts for their use upon a number of railroads connecting with those lines over which the Central Transportation Company has contracts as aforesaid.

In the year 1870, finding that the convenience of the travelling public required the running of such cars in a through line between the West and the Atlantic coast, the two companies made an
14 agreement wherein Pullman's Palace Car Company stipulated to perform the contracts of the Central Transportation Company with the various railroad companies, as aforesaid, and to lease all of its cars.

Until the year 1879 Pullman's Palace Car Company did not exercise nor attempt to exercise its own franchises or rights in Pennsylvania, and it did no business in said State except as agent or lessee of the Central Transportation Company, whose franchise alone was used and whose capital stock, amounting to $2,200,000, represented all the property and business in said State.

Pullman's Palace Car Company did not, during any of the years for which tax is claimed, derive any pecuniary profit from the arrangement with the Central Transportation Company in performing its contracts; but all of said profits, as well those resulting
15 from the contracts with railroads in Pennsylvania as those with lines of railways in other States, were paid over to the Central Transportation Company and paid out in dividends upon its capital stock, and upon said dividends and capital stock the

Central Transportation Company has paid annually all taxes due to the Commonwealth of Pennsylvania.

2. No part of the dividends of Pullman's Palace Car Company, in respect of which taxes are charged in the settlement hereby appealed from, resulted from business done in Pennsylvania, but all of said dividends were dividends of profits resulting from business done in other States, and said company cannot lawfully be required to pay to the State of Pennsylvania any tax whatsoever upon its profits or dividends so derived, or upon its capital stock in respect of them.

16 3. The capital stock of the company was not $5,826,200 in each of the years 1870, 1871, 1872, 1873, and 1874, as charged in said settlement, but the amount thereof was in each year as follows:

1870	$3,000,000
1871	4,000,000
1872	4,000,000
1873	4,000,000
1874	4,897,000

4. If part any of the capital stock of said company is taxable in said State the "proportion taxable for Pennsylvania" is, nevertheless, not so great for any of the years from 1870 to 1878, inclusive, as is assumed in said settlement. So large a proportion of capital stock cannot be found to be taxable by any just apportionment of either the net receipts, gross earnings, or car mileage of said company, or in any other manner, and consequently the tax due, if any, is not so great as charged in said settlement.

17 5. Although in each of the years 1879 and 1880 the said company did permit its cars to be used upon 617 miles of railroad not covered by its aforesaid agreement with the Central Transportation Company, yet, nevertheless, if the said use of its cars did render any part of its capital stock liable to taxation in Pennsylvania, the proportion taxable in said State for each year was much less than that upon which a tax is charged in said settlement, and the tax due said State is correspondingly less than the amount charged in said settlement for each of said years.

Thus, assuming that the proportion of capital stock to be taxable in Pennsylvania which the 617 miles in said State bear to the whole number of miles of road upon which the company permits its cars to be used (exclusive of roads covered by agreement with the

18 Central Transportation Company) the, tax due for 1879 is $658.88, and not $2,439.60, and for the year 1880 is $582.88, and not $2,986.88, as charged in said settlement, and upon the basis of net receipts or gross earnings the taxable amount is still less.

6. In the said settlement a full year's tax is charged for the year ending with the first Monday in November, 1870, whereas for more than three months of said year (prior to Feb. 10, 1870, date of agreement with Central Transportation Company) said company was not in any manner whatsoever engaged in business in Pennsylvania, either in its own right or that of any other corporation.

7. In said settlement for the period of time between April 24, 1874, and March 20, 1877, tax is charged at nine-tenths of one mill for each one per centum of dividend under section four of the
19 act of April 24, 1874, which said section applies only to transportation companies, whereas Pullman's Palace Car Company has no authority to transport, and has never been engaged, directly or indirectly, in the transportation of freight or passengers in Pennsylvania or elsewhere, and if taxable at all said company is taxable under the fifth section of said act at one-half of one mill for each one per centum of dividend, and not under the fourth section at nine-tenths of one mill.

8. In said settlement tax is charged for each year upon a large amount of capital stock owned by non-residents of Pennsylvania not lawfully taxable in said State.

9. Penalties amounting to $2,317.79 are charged in said settlement "for failure to report," whereas the said company did make to the auditor general all the reports required by law to be made,
20 which reports were disregarded and set aside by said auditor general, and said company consented to furnish further full and detailed information not required by law, but requested by the auditor general, provided reasonable time was given to prepare it, and employees of said corporation were engaged in preparing the said information when notice of said settlement was received. For this reason the company is not bound to pay said penalties, and also for the further reason that the tax upon which said penalties are based is not due, and also because when the matter has been called up by previous auditors general it has always been decided that no tax was due from said company, and was likewise so decided by the attorney general of Pennsylvania.

10. The company is not bound to pay the sum of $8,495.71 interest charged in said settlement, for the reason set forth in the
21 specification next preceding; for the further reason that it could not at any time have known or ascertained the amount of tax, if any, due the State of Pennsylvania; that it has not purposely withheld any taxes known to be due said State; that if any taxes were due, the mistake by reason of which they were not paid was mutual between the officers of the company and the officers of the Commonwealth; and also for the reason that the auditor general did not first send to the corporation a statement of the amount due, as required by section 13 of the act of June 7, 1879.

11. In consideration of the agreement or understanding that no claim would be made for tax on capital stock, the company agreed to pay and has paid semi-annually to the State of Pennsylvania heavy taxes upon its gross receipts, although the subject of
22 its liability for such tax was admitted by the attorney general in an official opinion to be "one of great doubt;" and for this reason, as well as for those previously mentioned, the company ought not to pay the penalties and interest charged in said settlement.

12. The said company is not in any event indebted to the Commonwealth of Pennsylvania for any greater sum than $1,241.76.

13. So far as they apply to Pullman's Palace Car Company, the laws of Pennsylvania imposing taxes for State purposes are void, because in conflict with clause four, section VIII of article I of the Constitution of the United States.

Harrisburg, Pa., April 28, 1881.

PULLMAN'S PALACE CAR COMPANY,
By its attorney, M. E. OLMSTED.

(Endorsement:) 36. Aug. 7. 1881. Commonwealth of
23 Pennsylvania *v.* Pullman's Palace Car Company. Appeal and specifications of objections. Filed May 2, 1881. Filed in auditor general's office April 30, 1881. E. Z. Ker, for William P. Schell, auditor general. Olmsted.

Bond on Appeal.

Know all men by these presents that we, Pullman's Palace Car Company and Charles F. Woerishoffer, of the city, county, and State of New York, and H. Villard, of the city, county, and State aforesaid, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of eighty-four thousand dollars ($84,000), lawful money of the United States of America, to be paid to the said Commonwealth of Pennsylvania, or her certain attorney
24 or assigns; to which payment, well and truly to be made, we do bind ourselves, and each of us, our heirs, executors, administrators, and successors, firmly by these presents.

Sealed with our seals and the corporate seal of said company and dated the 9th day of May, 1881.

Whereas the above-bounden Pullman's Palace Car Company has entered in the office of the auditor general of Pennsylvania an appeal from the settlement of an account for tax on capital stock, amounting to forty-one thousand eight hundred and sixty-nine & $\frac{76}{100}$ dollars ($41,869.76), made by the auditor general and appraised by the State treasurer on the 28th day of February, A. D. 1881:

Now, the condition of this obligation is such that if the said Pullman's Palace Car Company shall prosecute its said appeal with effect and pay all costs or charges which the court or arbitrators having jurisdiction to hear and determine said appeal shall
25 award, and also pay any sum of money which shall appear by the judgment of the court or award of arbitrators to be due upon said account to the Commonwealth of Pennsylvania, then this obligation to be void and of none effect, or, otherwise, to be and remain in full force and virtue.

[Seal of Pullman's Palace Car Co.]

PULLMAN'S PALACE CAR CO.,
By GEORGE M. PULLMAN,
President.

H. VILLARD. [SEAL.]
C. F. WOERISHOFFER. [SEAL.]

Attest:
A. L. WEINSHEIMER,
Secretary.

Signed, sealed, and delivered in the presence of—
T. F. OAKES.

SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York, }

Charles F. Woerishoffer, being duly sworn, says that he is a resident and householder in the city of New York, residing at
26 No. 29 Vesey street, in said city, and is worth twice the sum specified in the above undertaking over and above all liabilities and debts which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

C. F. WOERISHOFFER.

Sworn to before me this 9th day of May, 1881.
[Seal of A. M'Culloh, Notary Public.]

ALLAN M'CULLOH,
28 *Notary Public, New York County.*

I hereby approve the above-named sureties.

WM. G. CHOATE,
U. S. Dist. Judge.

U. S. OF AMERICA, } ss:
City, County, and State of New York, }

On this 9th day of May, 1881, before me personally came Charles F. Wœisishoffer, to me known, and known to me to be the individual named in the foregoing instrument, and acknowledged that he executed the same for the use and purpose therein named.
[Seal of Allan M'Culloh, Notary Public.]

27 ALLAN M'CULLOH,
Notary Public, (28) *New York County.*

STATE OF NEW YORK, } ss:
City and County of New York, }

I, William A. Butler, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Allan M'Culloh, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof and acknowledgment, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same; and further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said
28 certificate of proof or acknowledgment is genuine. I further certify that the said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 9th day of May, 1881.

WM. A. BUTLER, *Clerk.*

(Endorsement:) 36. May term, 1881. Commonwealth of Pennsylvania *v.* Pullman's Palace Car Company. Bond on appeal. Filed May 10, 1881.

May 10, 1881.—The within bond approved.
By the court: R. M. HENDERSON, *Judge.*

(Narr.)

DAUPHIN COUNTY, *ss:*

In Dauphin Common Pleas —. No. 36. Aug. Term, 1881.

OLMSTED.

29 The Commonwealth of Pennsylvania, by her attorney general, complains of the Pullman Palace Car Company of a plea that they render unto the said Commonwealth the sum of one hundred thousand dollars, lawful money of the United States, which they owe to and unjustly detain from her. For that whereas the said defendants, on the 28th day of February, A. D. 1881, at the county of Dauphin aforesaid, were indebted to the said plaintiff in the sum of forty-one thousand eight hundred and sixty-nine $\frac{76}{100}$ dollars, lawful money of the United States, on an account examined, adjusted, settled, and signed by the auditor general of this Commonwealth, and duly entered on the books of his office, as authorized and required by law, on the day and year last aforesaid, in which a certain sum of money, to wit, the sum last aforesaid, is due and
30 owing the said plaintiff from the said defendants, with interest thereon at the rate of twelve per centum per annum, from and after the expiration of two months from the day upon which the said account was so as aforesaid examined, adjusted, settled, and signed by the auditor general of this Commonwealth for tax on capital stock, as per acts of May 1st, 1868, April 24th, 1874, March 20th, 1877, and June 7th, 1879, for the years ending first Monday of November, A. D. 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, which said account was, on the 28th day of February, A. D. 1881, submitted to, revised, and approved by the State treasurer, and a copy thereof, within thirty days thereafter, sent by the said auditor general, under his hand and seal of office, to the said defendants, and which yet remains in full force against the said defendants and un-
31 appealed from, whereby, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff to demand and have of and from the said defendants a certain sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth, in the said account so as aforesaid examined, adjusted, settled, and signed by the auditor general of this Commonwealth, parcel of the said sum above demanded; and, being so indebted, the said defendants afterwards, to wit, on the day and year aforesaid, at the county aforesaid, promised to pay to the said plaintiff, on request, the last-mentioned sum of money.

And whereas, also, the said defendants, on the day and year in the first count mentioned, at the county aforesaid, were indebted to the said plaintiff in a certain further sum of money,

32 to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account in the first count mentioned, for money then and there had and received by the said defendants, to and for the use of the said plaintiff; and also a certain further sum of money, to wit, the sum last aforesaid, on an account settled and entered by the auditor general of this Commonwealth against the said defendants, on the day and year in the first count mentioned, for tax on capital stock, and approved by the State treasurer on the day and year in the first count mentioned.

And whereas, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, the said defendants, in consideration of the premises, promised to pay the two last-mentioned several sums of money, respectively, to the said plaintiff on re-
33 quest, yet the said defendants have disregarded their said promises, and, although often requested so to do, have not as yet paid any of the said several sums of money or any part thereof, to the damage of said plaintiff of one hundred thousand dollars, and therefore she brings suit, &c.

LYMAN D. GILBERT,
Deputy Attorney General,
For HENRY W. PALMER,
Attorney General.

(*Copy of Account.*)

Pullman's Palace Car Company in account with the Commonwealth of Pennsylvania. DR.

For tax on capital stock, per act of May 1, 1868; April 24, 1874 (section 4); March 20, 1877, and June 7, 1879, for the years ending on the first Mondays of November, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, and 1880, as per reports, herewith filed, and estimates of auditor
34 general and State treasurer. Incorporated July 15, 1867.

This company was called upon by the auditor general to report its capital stock and dividends for the years included in this settlement, and to furnish other information that would enable the accounting department to arrive at a just and equitable settlement of the taxes due from it to the Commonwealth. The company did not furnish the information requested, and therefore the auditor general and State treasurer have estimated an account from such reasonable data and information as they have been enabled to obtain, as follows:

1870.

Estimated dividend, 8% on capital stock of $5,826,200; estimated proportion of capital taxable for Penna., $557,976.70.

	Tax, 4 mills ($\frac{1}{2}$ mill for each one per cent. of dividend)	2,231 90	
35	Int. from Feb. 15, 1877, to Feb. 15, 1878	1,874 79	
	Penalty for failure to report	223 19	
			4,329 88
	1871.		
	Estimated dividend, 8% on capital stock of $5,826,200; estimated proportion of capital taxable for Penna., $557,976.70.		
	Tax, 4 mills ($\frac{1}{2}$ mill for each one per cent. of dividend)	2,231 90	
	Int. from Feb. 15, 1871, to Feb. 15, 1878	1,606 96	
	Penalty for failure to report, &c.	223 19	
			4,062 05
	1872.		
	Estimated dividend, 8% on capital stock, $5,826,200; estimated proportion taxable for Penna., $557,976.70.		
	Tax, 4 mills ($\frac{1}{2}$ mill, &c.)	2,231 90	
	Int. from Feb. 15, 1873, to Feb. 15, 1878	1,339 14	
	Penalty for failure to report	223 19	
			3,794 23
	1873.		
	Estimated dividend, 8% on capital stock, $5,826,200; estimated proportion taxable for Penna., $557,976.70.		
	Tax, 4 mills ($\frac{1}{2}$ mill, &c.)	2,231 90	
	Int. from Feb. 15, '74, to Feb. 15, '78	1,071 31	
	Penalty for failure to report	223 19	
			3,526 40
36	1874.		
	Estimated dividends, 8% on capital stock, $5,826,200; estimated proportion taxable for Penna., $555,976.70.		
	Tax at rate of 4 mills ($\frac{1}{2}$ mill to April 24, 1874) $1,039 51		
	Tax at rate 7$\frac{1}{2}$ mills from 24 April, 1874 2,146 29		
		3,185 80	
	Int. from Feb. 15, 1875 to Feb. 15, 1878	1,146 88	
	Penalty for failure to report	318 58	
			4,651 26
	1875.		
	Estimated dividend, 8% on capital stock, $5,826,200; estimated proportion taxable for Penna., $557,976.70.		
	Tax at rate of 7$\frac{2}{10}$ mills ($\frac{9}{10}$ of a mill)	4,017 43	

Int. from Feb. 15, 1876, to Feb. 15, 1878--	964 18	
Penalty for failure to report----------	401 74	
		5,383 35

1876.

Estimated dividend, 8% on capital stock, $5,938,200; estimated proportion taxable for Penna., $569,972.08.		
Tax, $7\frac{2}{10}$ mills ($\frac{9}{10}$ of a mill, &c.)----------	4,103 80	
Int. from Feb. 15, 1877, to Feb. 15, '78----	492 45	
Penalty for failure to report----------	410 38	
		5,006 63

37 1877.

Estimated dividends, 8% on capital stock, $4,938,200; estimated proportion taxable for Penna., $569,972.08.		
Tax at rate of $7\frac{2}{10}$ mills to March 20, 1877-	1,506 70	
Tax at rate of 4 mills from March 20, 1877-	1,436 34	
Penalty for failure to report----------	294 33	
		3,237 67

1878.

Estimated dividend, 8% on capital stock, $5,938,200; estimated proportion taxable for Penna., $612,953.44.		
Tax, 4 mills ($\frac{1}{2}$ mill, &c.)----------	2,451 81	
		2,451 81

1879.

Estimated dividend, 8% on capital stock, $5,938,200; estimated proportion taxable for Penna., $746,720.02.		
Tax, 4 mills ($\frac{1}{2}$ mill, &c.)----------	2,986 88	
		2,986 88
Due Commonwealth ----------		$41,869 76

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *Feb.* 28, 1881.

38 Settled and entered.

WILLIAM P. SCHELL,
Auditor General.

TREASURY DEPARTMENT, PA.,
HARRISBURG, *Feb.* 28, 1881.

Approved:

SAM'L BUTLER,
State Treasurer.

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *Jan.* 6, 1882.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and the seal of office the day and year aforesaid.

[Seal of Auditor General.]

THOMAS M. COMANT
For JOHN A. LEMAN,
Auditor General.

Endorsement: No. 36. Aug. term, 1881. Commonwealth of Pennsylvania *v.* Pullman Palace Car Company. Narr. and copy of account. Filed Jan. 9, 1882.

Agreement to Dispense with Jury, &c.

In the Court of Common Pleas of Dauphin County. Aug. Term, 1881.

COMMONWEALTH OF PENNSYLVANIA
39 *v.* } No. 36.
PULLMAN'S PALACE CAR COMPANY.

It is hereby agreed that a trial by jury be dispensed with in the above-stated case, and that the same be submitted to the decision of the court, to be heard and determined under the provisions of an act entitled "An act to provide for the submission of civil cases to decision of the court, and to dispense with trial by jury," approved the 22nd day of April, 1874, subject, however, to a writ of error as in other cases, at the option of either party.

March 22d, 1883.

ROBERT SNODGRASS,
Dep'ty Att'y Gen'l.
M. E. OLMSTED,
Att'y for Defendant.

(Endorsement:) 36. Aug. term, 1881. Commonwealth *v.*
40 Pullman's Palace Car Co. Agreement to dispense with jury, &c. Filed March 22d, 1883.

Stenographer's Notes.

DAUPHIN COUNTY, PA.:

Court of Common Pleas. Aug. Term, 1881.

COMMONWEALTH OF PENNSYLVANIA
versus } No. 36.
PULLMAN PALACE CAR COMPANY.

Appeal.

Tried before Hon. John W. Semanton, president judge (without a jury), Thursday, March 22, 1883.

Appearances: Commonwealth, Robert Snodgrass, Esq., deputy att'y gen'l; defendant, M. E Olmsted, Judge Lochrane.

Reported and transcribed in compliance with the act of Assembly approved May, A. D. 1876, by H. C. Demming, court stenographer, Harrisburg, Pa., a. m., Thursday, March 22d, 1883.

Mr. Snodgrass started the case for the Commonwealth, as follows:

May it please the court, this is a claim for taxes upon
41 capital stock on an estimated account settled against *the* Pullman's Palace Car Company. The account, as stated, is an estimated account made under the act of 1861, yet we have agreed, I think, as to everything that will be necessary to present the case to the court, including, of course, the account, considering that as a *prima facie* case, and submitting all the facts that are desired by either side, and receiving, of course, any objections as to their relevancy. With that understanding, I think we can put their case before your honor very briefly.

This account was settled for the years 1870 to 1880, inclusive, for tax upon capital stock, interest, and penalties. We may eliminate from it at once all those items of interest and penalties which are excluded under the standard decision. I may say for the years
42 1870 to 1874, inclusive, the settlement is under the act of 1868, section 4, and the account for 1875, 1876, and part of 1877 is under the 4th section—I think it is—of the act of 1874. Your honor will understand that that is the section which relates to tax upon transportation companies, called by that general designation "to companies and other companies." The account specifies the facts under that section, and whether it was not settled under that other section I do not know; but I find the account here. The balance of the tax raised here, from 1872 to 1880, is under the acts of 1877 and 1879 of the half-mill tax. So, with that statement of the account, you understand the nature of it.

The COURT: You offer the account.

Mr. SNODGRASS: Yes, sir; it is agreed it shall go in. Mr. Olmstead has taken the trouble to print a great many facts which
43 will be of no advantage to him, not bearing in any way upon this case; most of these are parol and are sworn to. I agree that everything that is printed in this book shall be considered in the same light as if the parties had been here and sworn to it, but reserving, of course, objections, to its relevancy; but, of course, I think, some is relevant. With that understanding I agree that all these facts shall go in. We will refer to it in the argument without referring to it any more at this time.

(The book admitted containing the account, appeal, correspondence, depositions, &c., (handed to court.)

Mr. OLMSTED: We have nothing further to offer on our side except this book (indicating same book). We may offer the appeal.

Mr. SNODGRASS: There is one thing not in that book that
44 should go in—it is an account of the contract made with the Central Transportation Company now held with the Pullman

Company on the lines over which the Pullman cars run. (Handed to the court.)

The COURT: This is a copy of contract [of] Northern Central railway with Woodruff & Company, and copy of contract [of] Central Pennsylvania Railroad Company with Woodruff & Company.

Mr. SNODGRASS: I do not think there will be any controversy at all as to the kind of business this corporation is doing. I do not think anything is said in Mr. Olmsted's offers about that; that will have to be gathered from the facts; but I have a brief of the Illinois case, which briefly stated what they shall do, and I will want to use that, likely, as I go along.

Judge LOCHRANE: As to how far they are indicated in another State government?

Mr. SNODGRASS: So far as the facts are stated in this case,
45 of the kind of business they do, and how they operate.

The COURT: You agree that they shall use that?

Mr. SNODGRASS: As to the facts of the kind of business this company is doing.

The COURT: Mr. Snodgrass agrees that the court may look to the statement of facts in that case, so far as they are relevant to the nature of the business?

Mr. SNODGRASS: Yes, sir.

Judge LOCHRANE: It is in 73 Illinois, page 360, Pullman's Palace Car Company *versus* Chester M. Smith.

Mr. OLMSTED: I think I will read our appeal.

The COURT: First, are there any other matters of fact to be presented by either side?

Mr. SNODGRASS: I do not see how any others can go in.

(Argument.)

46 (Endorsement:) 36. Aug. term, 1881. Filed March 21' 1883.

Extracts From Book Admitted in Evidence as Offered by Mr. Olmsted.

Some time in the year 1877 the then auditor general of Pennsylvania caused a letter to be addressed to one of the attorneys of Pullman's Palace Car Company, advising him of an opinion expressed by the deputy attorney general to the effect that the company was liable for taxes upon capital stock. There seems to have been a prior correspondence, but it is not readily at hand, and does not in any event affect the case. The letter above referred to brought the following reply:

(Copy.)

Geo. M. Pullman, President. Horace Porter, Vice-President.

PULLMAN'S PALACE CAR COMPANY,
OFFICE OF THE VICE-PRESIDENT,
CORNER WALL AND BROAD STREETS,
NEW YORK, *December* 13, 1877.

W. J. Bayard, Esq., corporation clerk, auditor general's office, Harrisburg, Pa.

DEAR SIR: Your letter to Mr. Olmsted, advising him of the opinion of the attorney general, as expressed by his deputy, Lyman D. Gilbert, Esq., and requiring us to make reports of capital stock and dividends, were duly forwarded to me.

We cannot dispute the correctness of the principles upon which Mr. Gilbert bases his opinion, but we are confident that, with a full knowledge of the facts, which are not, perhaps, sufficiently set forth in my letter of April 26, he will find that the said principles are not applicable to this company. As I understand from his opinion and from my recent interview with him and with the attorney general, and at which you were present, the taxation of the capital stock of foreign corporations is based either upon the amount of capital stock invested in Pennsylvania, or upon the profits derived from the transaction of business in that State. If a corporation of another State invests any portion of its capital in Pennsylvania, that portion of its capital, whether profitable or otherwise, is taxable there. If dividends are paid upon it they are made the measure of the tax; if no dividends are paid the capital is taxed upon its appraised value. Also, if, having no capital invested in Pennsylvania, a corporation of another State transacts business there in such a way as to derive profits, whereby the value of its capital stock is increased, its capital stock may, perhaps, be, to some extent, taxable. Admitting all this, we still deny the right of the State of Pennsylvania to tax the whole or any portion of the capital stock of this company for the reason that, as will shortly be shown, it has no investments in and desires no profits from that State.

The Central Transportation Company, a corporation of the State of Pennsylvania, owns one hundred and nineteen sleeping and parlor coaches, and has contracts for their use upon the principal railroads in Pennsylvania, particularly the lines of the Pennsylvania Railroad Company, and including certain leased lines in other States.

47 In 1870 Pullman's Palace Car Company, finding that convenience of the travelling public required the running of such cars in a through line between the West and the Atlantic coast, found it necessary to make some arrangements with the Central Transportation Company looking to that end. An arrangement was effected whereby this company stipulated to perform the contracts of the Central Transportation Company and lease all of its cars, paying as rental therefor a sum amounting to twelve per cent. per annum upon the capital stock of the Central Transportation Company. This rental, which is regularly paid, exceeds not only the net receipts of the business in Pennsylvania, but also upon the leased lines in other States, above mentioned, so that all the profits arising under the lease, in Pennsylvania or elsewhere, accrue to the Central Transportation Company and are divided among its stockholders. They do not accrue to and are not divided among the stockholders of Pullman's Palace Car Company. The tax resulting from the distribution of these profits is paid into your State treasury by the Central Transportation Company, and amounts to $12,320 per annum. It is proper to state that, as in the lease no provision was made as

to the payment of taxes, their payment has been divided between the companies, this company bearing a portion of the burden.

The one hundred and nineteen cars are still the property of the Central Transportation Company, although they have "Pullman" painted upon their sides. The capital stock of that company and the dividends paid thereon represent all the property, all the profits, and all the business; the capital stock of Pullman's Palace Car Company represents nothing in Pennsylvania.

In short, Pullman's Palace Car Company is a corporation of the State of Illinois, having and exercising, as we claim, no franchise of its own in your State, but acting simply as the agent of the Central Transportation Company in the exercise of its franchise.

It has no capital invested in and derives no profit from the State of Pennsylvania.

This letter is addressed to you, as the correspondence thus far has been with your department. Have the kindness to refer it to the attorney general or to Mr. Gilbert. We have no doubt that with the facts before them they will find that this corporation does not come within their ruling as one whose capital stock is subject to taxation in Pennsylvania.

Very truly yours,

(Signed) HORACE PORTER,
Vice-President.

At the same time there was pending the question of the company's liability for the tax of eight-tenths of one per centum upon gross receipts. Both questions were referred to the attorney general for his decision, and the following opinions were given and certified to the company:

Opinion upon Gross-Receipts Tax.

(Copy.)

OFFICE OF ATTORNEY GENERAL,
HARRISBURG, 3 *Jan'y*, 1878.

Hon. J. F. Temple, auditor general.

SIR: Notwithstanding the reasons advanced by General
48 Porter on behalf of the Pullman Palace Car Company, it is still the opinion of the attorney general that the liability of that company for tax on gross receipts ought to be decided by the courts of the Commonwealth.

It is true the subject is one of great doubt, but it is possible that a decision can be obtained in favor of the State, and that possibility we ought not to surrender.

Very truly yours,

(Signed) LYMAN D. GILBERT.
Deputy Attorney General.

Endorsement: (Copy.) Pullman Palace Car Company. Opinion of attorney general in regard to the taxation of gross receipts of said company. Filed in the auditor general' office January 3, 1878.

AUDITOR GENERAL'S OFFICE,
HARRISBURG, *January* 9, 1878.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and seal of office the day and year aforesaid.

(Signed) J. F. TEMPLE,
Auditor General.

Opinion upon Capital Stock Tax.

(Copy.)

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, *Jan.* 3, 1878.

W. J. Bayard, Esq., corporation clerk, auditor general's office.

DEAR SIR: I have considered the communication sent you by General Horace Porter on behalf of the Pullman Palace Car Company on the subject of the liability of that company—the tax on capital stock.

If you are satisfied that there is no investment in this Commonwealth of capital by this company, that there is no ownership of property by it within this State, it is not liable to the tax on capital stock.

Very respectfully your,

(Signed) LYMAN D. GILBERT,
Deputy Attorney General.

Endorsed: (Copy.) Pullman Palace Car Company. Opinion of attorney general in regard to the taxation of the capital stock of said company. Filed in the auditor general's office January 3, 1878.

AUDITOR'S GENERAL'S OFFICE,
HARRISBURG, *Jan.* 9, 1878.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and seal of office the day and year aforesaid.

(Signed) J. F. TEMPLE,
Attorney General.

The company paid the tax on gross receipts notwithstanding the doubtfulness of its liability, and has continued to do so down to the last tax period of six months. It made the following report of capital stock for 1877, showing no investment in Pennsylvania:

Report of Capital Stock for 1877.

A—Form 2.

(Form of report for year in which any dividend has been declared. Both pages of this blank are to be used in all cases where no dividend has been declared, and where the dividends declared do not amount to six per cent. on the whole capital stock. Where the dividends are equal to or greater than six per cent. the first page of this blank, when properly filled, will be sufficient report.)

Report of the Pullman's Palace Car Company for the year ending first Monday of November, A. D. 1877.

OFFICE OF THE PULLMAN'S PALACE CAR COMPANY,
COR. WALL AND BROAD STREETS,
NEW YORK, *January*, 1878.

[Give post-office address of company.]

To the auditor general of Pennsylvania:

Agreeably to law, as secretary of the above company, I make the following report, viz:

49 Total par value of the capital stock of said company invested in Pennsylvania, nothing.

Amount of capital paid in, invested in Pennsylvania, nothing.

Amount of capital invested in Pennsylvania upon which dividends were declared, nothing.

Date of each dividend declared upon capital invested in Pennsylvania. None declared.

Amount of each dividend declared upon capital invested in Pennsylvania. None declared.

Rate per cent. per annum of dividends upon capital invested in Pennsylvania. None declared.

None of the capital stock of Pullman's Palace Car Company is invested within the State of Pennsylvania, and it is, therefore, not liable to taxation in that State, as per decision of Honorable George Lear, attorney general.

CHAS. W. ANGELL, *Secretary.*

STATE OF ILLINOIS, } ss:
Cook County, }

On this 15th day of March, A. D. 1878, personally appeared before me, a notary public in and for the county aforesaid, Chas. W. Angell, secretary of the Pullman's Palace Car Company, who, being duly sworn according to law, did depose and say that the foregoing report is just and true according as the accounts stand on the books of the company.

CHAS. W. ANGELL.

Sworn to and subscribed before me the day and year aforesaid.

CHAS. S. ALLEN, [SEAL.]
Notary Public.

This report was filed April 4, 1878, and was satisfactory to the then auditor general, who made no claim for tax upon capital stock.

His successor in office, doubtless unaware of the past history of the matter, sent to the company a printed circular letter, of which the following is a copy:

Circular Letter Calling for Reports.

A—Form 105.

DEPARTMENT OF THE
AUDITOR GENERAL OF PENNSYLVANIA,
HARRISBURG, *June* 4, 1880.

To A. S. Weinsheimer, Esq., secretary Pullman's Palace Car Company, Chicago, Ill.

DEAR SIR: Reports for the following years have not been received at this department: 1867 to 1878, inclusive.

Blanks have been mailed you this day, which you will please fill up for each year, as required, and return to this department within thirty days from date.

In case of failure to make these reports an estimated settlement will be made against your company, with interest and the fifty per cent. penalty added that the law imposes.

Respectfully yours,

WILLIAM P. SCHELL,
Auditor General.

To this circular letter there was made the following reply:

Letter of Secretary Weinsheimer to Auditor General Schell.

Geo. M. Pullman, president; Horace Porter, vice-president; A. S. Weinsheimer, secretary.

PULLMAN'S PALACE CAR COMPANY,
OFFICE OF THE SECRETARY,
CHICAGO, *June* 21, 1880.

Hon. W. P. Schell, auditor general State of Pennsylvania, Harrisburg, Pa.

SIR: I am in receipt of a circular letter from your department, bearing date June 4, 1880, calling for reports for years 1867 to 1878, and accompanied by blank form for reports of capital stock.

In reply I have the honor to say that Pullman's Palace Car Company is a corporation of the State of Illinois, and that no portion of its capital stock was invested or used within the State of Pennsylvania during any of the years mentioned; neither did the company exercise its corporate franchises in your State during said years.

It acted there simply as agent or lessee of the Central Transportation Company, a corporation of the State of Pennsylvania, upon whose stock the tax was regularly paid, as the records of your department will show.

The question of taxation was raised and fully discussed with your department and the attorney general, by our vice-president and counsel, and it was determined—Attorney General Lear writing an opinion to that effect—that the tax having been paid by the Central Transportation Company, Pullman's Palace Car Company is not liable for any tax on capital stock.

Very respectfully,

A. S. WEINSHEIMER, *Secretary.*

It was supposed that this reply was satisfactory to the auditor general, as no further action was taken by him at the time, but several months later, to wit, January 21, 1881, he sent to the secretary of the company the following letter:

Auditor General Schell to Secretary Weinsheimer.

DEPARTMENT OF THE AUDITOR GENERAL,
COMMONWEALTH OF PENNSYLVANIA, *January* 21, '81.

A. S. Weinsheimer, Esq., secretary Pullman's Palace Car Company, Chicago, Illinois:

DEAR SIR: Your accounts have been permitted to remain unsettled thus long, hoping to have more light on the condition of your business and capital before making such settlement. It is now important to have them closed at once. No settlement has ever been made on capital stock. A settlement on gross receipts for a short period has been made. I find that your company was incorporated on the 15th of July, 1867. You will, therefore, please furnish this office with reports of capital stock, on the blanks now sent you, for each year ending the first Monday of November, beginning with the year 1867 up to and including the year 1878. In addition to such return you can assist this department greatly in adjusting your taxes by furnishing a statement, duly verified by the secretary and treasurer or president of your company, showing the whole number of miles your company used sleeping and parlor cars upon for each year and the number of miles in Pennsylvania for each year.

You can further throw light upon this case by furnishing a statement, duly verified as above, showing the amount of gross receipts from all sources in the State of Pennsylvania—in other words, your total gross receipts and receipts in State of Pennsylvania, separate items. This information is respectfully and earnestly desired in order that your accounts be at once settled. If your company claims exemption, let such claim, with reasons fully given, accompany the information above requested, and the claim will receive the proper consideration.

All the information above requested is needed in a proper determination of your company's account; for this reason it is asked, and if it is not furnished, it will compel this Department to estimate accounts under the act of 1811, for each of the years named, and impose the penalty of fifty per centum under said act.

These reports were substantially called for in form now asked June 4th, 1880, and your reply of June 21st, 1880, was not deemed sufficient without the reports,

Respectfully yours,

E. F. KERR,
For WILLIAM P. SCHELL,
Auditor General.

Secretary Weinsheimer to Auditor General Schell.

Geo. M. Pullman, president; Horace Porter, vice-president; A. S. Weinsheimer, secretary:

PULLMAN'S PALACE CAR COMPANY,
OFFICE OF THE SECRETARY,
CHICAGO, *Feb.* 4, 1881.

Hon. W. P. Schell, auditor general of Pennsylvania, Harrisburg, Pa.

DEAR SIR: Your favor of the 21st inst., per your Mr. Kerr, was duly received. Herewith enclosed find blank forms sent by you, duly filled out according to the circumstances of our company, for each of the years named.

51 We do not understand that corporations of other States are required to report, under the laws of Pennsylvania, any capital stock, unless it is invested in that State. Pullman's Palace Car Company is a corporation of the State of Illinois, and had not, during the years named, any capital invested in Pennsylvania, and our reports are, of course, made to show that, according to the facts.

In regard to the statement of mileage and gross receipts which you request us to make, covering the years 1867 to 1878, I have to say that it is almost impracticable for us to make them at this date. In its younger days, the records of the company were not kept in the anticipation of such a demand for statistics, and to furnish the specific information you now require will necessitate the employment of an extra force to work up the data from old books, kept upon a plan essentially different from that now in use, and will entail upon the company a great deal of trouble and expense.

I was not aware, indeed am not now aware, of any law requiring us to make reports to your State, but, as we are anxious to comply with your wishes, as far as possible, I will, if you grant the necessary time, endeavor to furnish such information as you require.

In reply to your intimation that you will be compelled to estimate accounts and add 50 per cent. penalty, permit me to suggest that since the passage of the act of March 20th, 1877, and the decision of the attorney general that this company is liable for tax on gross receipts thereunder, reports have been made semi-annually showing all receipts of this company from business in Pennsylvania, and although we do not concur in the opinion of the attorney general, we have, nevertheless, regularly paid the tax of eight mills.

Having never been purposely derelict in making reports or paying any taxes to which any officers of your State have ever ruled us to be liable, we do not understand in what manner we can have incurred any penalty. If there has been any dereliction upon our part, it has been, I beg to assure you, entirely unintentional.

Very respectfully,

A. S. WEINSHEIMER, *Secretary.*

The foregoing letter was accompanied by reports for each of the years 1867 to 1878, inclusive. The following is a copy of the report for 1878. The report for each of the other years is in precisely the same form:

Report of Capital Stock for 1878.

(Form of report for year in which any dividend has been declared. Both pages of this blank are to be used in all cases where no dividend has been declared, and where the dividends declared do not amount to six per cent. on the whole capital stock. Where the dividends are equal to or greater than six per cent., the first page of this blank, when properly filled, will be a sufficient report.)

Report of the Pullman's Palace Car Company for the Year Ending First Monday in November, A. D. 1878.

OFFICE OF THE PULLMAN'S PALACE CAR COMPANY,
CHICAGO, ILLINOIS, *February 5th*, 1881.

(Give post-office address of company.)

To the auditor general of Pennsylvania:

Agreeably to law, as secretary of the above company, I make the following report, viz:

Total authorized capital of company invested in Pennsylvania, none.

Whole number of shares of stock authorized invested in Pennsylvania, none.

Number of shares of stock issued invested in Pennsylvania, none.

Par value of each share invested in Pennsylvania, none.

Amount paid into the treasury of the company on each share invested in Pennsylvania, none.

Amount of capital paid in invested in Pennsylvania, none.

Amount of capital upon which dividends were declared invested in Pennsylvania, none.

Date of each dividend declared upon capital invested in Pennsylvania, none.

Amount of each dividend declared upon capital invested in Pennslyvania, none.

Rate per cent. per annum of dividends upon capital invested in Pennsylvania, none.

52 Amount of profit added to sinking fund from business done in Pennsylvania, none.

A. S. WEINSHEIMER, *Secretary.*

STATE OF ILLINOIS, } ss:
County of Cook, }

On the 5th day of February, A. D. 1881, personally appeared before me, a notary public in and for the county aforesaid, A. S. Weinsheimer, secretary of the Pullman Palace Car Company, who, being duly sworn according to law, did depose and say that the foregoing report is just and true, according as the account stands in the books of the company, and that it includes all dividends, whether in cash, stock, or scrip, or of any other character or description, declared by said company upon capital stock invested in Pennsylvania during the year ending on the first Monday of November, A. D. 1878, and that the amount of profit added to the sinking fund of this company

during the said year, without a division thereof amongst its stockholders, was $—— as above stated.

A. S. WEINSHEIMER, *Secretary.*

Sworn to and subscribed to before me the day and year aforesaid.

[SEAL.] WM. S. YOUNG, JR.,
Notary Public.

Report and appraisement for year in which no dividend or a dividend of less than six per cent. has been declared, as shown by the first page of this report:

Report and Appraisement of the Capital Stock of Pullman's Palace Car Company Invested in Pennsylvania, for the Year Ending First Monday of November, 1878.

STATE OF ILLINOIS, }
County of Cook, } ss:

On this 5th day of February, A. D. 1881, before me, the subscriber, a notary public in and for the said county, personally appeared A. S. Weinsheimer, secretary of the Pullman's Palace Car Company, who, being by me duly sworn or affirmed, did say that the amount of capital paid in of said company invested in Pennsylvania is nothing, and that said company declared no dividend in cash, stock, scrip, or of any other character or description during the year ending first Monday of November, 1878, save the dividends herein reported, and that he will, with fidelity, according to the best of his knowledge and belief, estimate and appraise the capital stock of said company invested in Pennsylvania at its actual value in cash, as it existed between the 1st and 15th days of November, A. D. 1878, not less, however, than the average price which said stock sold for during said year, and not less than the price or value as indicated or measured by the amount of the dividends made or declared during the year, and that the amount of profit added to the sinking fund of this company during the said year, without a division thereof against its stockholders, was $——.

A. S. WEINSHEIMER, *Secretary.*

Sworn or affirmed before me the day and year aforesaid.

WM. S. YOUNG,
Notary Public.

OFFICE OF THE PULLMAN'S PALACE COMPANY,
CHICAGO, *February 5th*, 1881.

[Give the post-office address of company.]

I, the undersigned, being the secretary of the Pullman's Palace Car Company, do certify that, in pursuance of my aforesaid oath or affirmation, I have estimated and appraised the capital stock of said company invested in Pennsylvania at its actual value in cash, as follows, viz: no shares, at no dollars and no cents per share, amounting in the whole to nothing.

In witness whereof I have hereunto set my hand the day and year aforesaid.

A. S. WEINSHEIMER, *Secretary.*

In 1879 and 1880 the company permitted its cars to be used upon 617 miles of railroad in Pennsylvania not covered by
53 the contract with the Central Transportation Company. For those years it made reports to the auditor general, as follows:

Report of 1879.

(Form of report for year in which any dividend has been declared. Both pages of this blank are to be used in all cases where no dividend has been declared, and where the dividends declared do not amount to six per cent. on the whole capital stock. Where the dividends are equal to or greater than six per cent. the first page of this blank, when properly filled, will be a sufficient report.)

Report of the Pullman's Palace Car Company for the Year Ending First Monday of November, A. D. 1879.

OFFICE OF THE PULLMAN'S PALACE CAR COMPANY,
CHICAGO, ILLINOIS, *December 27th*, 1879.

(Give post-office address of company.)

To the auditor general of Pennsylvania:

Agreebly to law, as secretary of the above company, I make the following report, viz:

Total authorized capital of company, $6,000,000.00.

Whole number of shares of stock authorized, 60,000.

Number of shares of stock issued, 59,382.

Par value of each share, $100.00.

Amount paid into the treasury of the company on each share, $100.00.

Amount of capital paid in, $5,938,200.00 × $\frac{617}{2245}$ = $164,720.00, *pro rata* in Pennsylvania.

Amount of capital upon which dividends were declared, $5,938,-208.00.*

Date of each dividend declared, 1st days of February, May, August, and November.

Amount of each dividend declared, 2 per cent. quarterly, or $118,764.00.

Rate per cent. per annum of dividends, eight per cent.

Amount of profit added to sinking fund, $658,880.00.

A. S. WEINSHEIMER, *Secretary.*

STATE OF ILLINOIS, } ss:
City of Chicago, }

On this 27th day of December, A. D. 1879, personally appeared

* Pullman's Palace Car Company, a corporation of the State of Illinois, uses or permits to be used sleeping and parlor cars upon 22,243 miles of railroad (exclusive of roads covered by contract with Central Transportation Company), of which 617 miles are within the State of Pennsylvania.

The proportion of capitol stock equivalent to proportion of railroads in Pennsylvania, as above, is $\frac{617}{2245}$ part of $5,938,200.00, or $164,720.00.

before me, a notary public in and for the city aforesaid, Alfred S. Weinsheimer, secretary of the Pullman's Palace Car Company, who, being duly sworn according to law, did depose and say that the foregoing report is just and true, according as the accounts stand in the books of the company, and that it includes all dividends, whether in cash, stock, scrip, or of any other character or description, declared by said company during the year ending on the first Monday of November, A. D. 1879, and that the amount of profit added to the sinking fund of this company during the said year, without a division thereof amongst its stockdolders, was $——, as above stated.

A. S. WEINSHEIMER, *Secretary.*

Sworn to and subscribed before me the day and year aforesaid.

HENRY E. WATKINS,
Notary Public.

Report of 1880.

(Form of report for year in which any dividend has been declared. Both pages of this blank are to be used in all cases where no dividend has been declared, and where the dividends declared do not amount to six per cent. on the whole capital stock. Where the dividends are equal to or greater than six per cent. the first page of this blank, when properly filled, will be a sufficient report.)

Report of the Pullman's Palace Car Company for the Year Ending First Monday of November, A. D. 1880.

OFFICE OF THE PULLMAN'S PALACE CAR COMPANY,
CHICAGO, ILLINOIS, *December* 20, 1880.

(Give post-office address of company.)

To the auditor general of Pennsylvania:

Agreebly to law, as secretary of the above company, I make the following report, viz:

54 Total authorized capital of company, $6,000,000.00.

Whole number of shares of stock authorized, 60,000.

Number of shares of stock issued, 59,902.

Par value of each share, $100.00.

Amount paid into the treasury of the company on each share, $100.00.

Amount of capital paid in, $\frac{6}{25}\frac{1}{3}\frac{7}{3}$ of $5,990,200.00 = $145,722.25.*

Amount of capital upon which dividends were declared, $5,990,200.00.

Date of each dividend declared, 1st days of February, May, August, and November.

---

* Pullman's Palace Car Company, a corporation of the State of Illinois, uses, or permits to be used, sleeping and parlor cars upon 25,363 miles of railroad (exclusive of roads covered by contract with Central Transportation Company), of which 617 miles are within the State of Pennsylvania.

The proportion of capital stock equivelent to proportion of railroads in Pennsylvania, as above, is $\frac{6}{25}\frac{1}{3}\frac{7}{3}$ parts of $5,990,200, or $145,722.25.

Amount of each dividend declared, two per cent.
Rate per cent. per annum of dividends, eight per cent.
Amount of profit added to sinking fund, $582,888.00.

A. S. WEINSHEIMER, *Secretary.*

STATE OF ILLINOIS, } ss:
County of Cook, }

On this 20th day of December, A. D. 1880, personally appeared before me, a notary public in and for the county aforesaid, A. S. Weinsheimer, secretary of the Pullman's Palace Car Company, who, being duly sworn according to law, did depose and say that the foregoing report is just and true, according as the accounts stand in the books of the company, and that it includes all dividends, whether in cash, stock, scrip, or of any other character or description, declared by said company during the year ending on the first Monday of November, A. D. 1880, and that the amount of profit added to the sinking fund of this company during the said year, without a division thereof amongst its stockholders, was $——, as above stated.

A. S. WEINSHEIMER, *Secretary.*

Sworn to and subscribed before me the day and year aforesaid.

[SEAL.] CHARLES L. ALLEN,
Notary Public.

In the face of these reports, and without further notice to the company, the auditor general and State treasurer settled against it the account as heretofore given on page —.

From the account thus estimated the company entered the appeal as heretofore given on page —.

55 *Charter Pullman's Palace Car Company.*

SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That Geo. M. Pullman, John Crerar, and Norman Williams, Junior, and their associates, successors, and assigns, be, and are hereby, created a body politic and corporate, under the name and style of Pullman's Palace Car Company, with all powers, rights, privileges, and immunities incident to corporations and necessary or useful for the purposes of this act: Provided, That if the corporation created by this act shall not organize within one year after the passage hereof, then this act shall be null and void.

SECTION 2. The capital stock of the said company shall be one hundred thousand dollars, and be divided into shares of one hundred dollars each, and it may be increased from time to time, as a majority of the stockholders may direct, and shall be issued and transferred in such manner and under such conditions as the directors of the said company shall by the by-laws thereof prescribe.

SECTION 3. The corporate powers of the said company shall be vested in and exercised by a board of directors, consisting of such number of persons, not less than three nor more than seven, as the stockholders of said company may from time to time direct.

The said directors shall be chosen by the stockholders at such time and place as may be fixed by the by-laws of the said company, and shall hold their offices for one year and until their successors are elected and qualified. They shall elect one of their number president of said company, and may fill any vacancy in the said board occasioned by death, resignation or otherwise, for the unexpired portion of the term of office so becoming vacant, and may make such rules, by-laws, and regulations, and appoint such officers and servants as they may from time to time deem expedient. Until an election of directors, as herein provided, the persons named as corporators in the first section of this act shall constitute a board of directors, and shall have and may exercise all the powers of such board.

SECTION 4. The said corporation shall have power to manufacture, construct, and purchase railway cars, with all convenient appendages and supplies for persons traveling therein, and the same may sell or use, or permit to be used, in such manner and upon such terms as the said company may think fit and proper.

SECTION 5. The said corporation shall have power to borrow money and may secure the payment of the same by deed of trust, mortgage, or other security.

SECTION 6. It may be lawful for the company hereby incorporated to purchase, acquire, and hold such real estate as may be deemed necessary for the successful prosecution of their business, and may have power to sell and convey the same.

SECTION 7. This act shall be deemed a public act, and shall take effect from and after its passage.

Approved February 22, 1867.

Agreement Between Central Transportation Company and Pullman's Palace Car Company.

This indenture, made this seventeenth day of February, A. D. one thousand eight hundred and seventy, between the Central Transportation Company, a corporation of the Commonwealth of Pennsylvania, having their place of business in city of Philadel-
56 phia, of the first part, and Pullman's Palace Car Company, a corporation of the State of Illinois, having their place of business in the city of Chicago, of the second part.

Whereas the parties hereto are engaged in the business of manufacturing railway cars, generally known as sleeping cars, under certain patents belonging to them, respectively, and of hiring the same to railroad companies, under written contracts, to be used and employed on and over the lines of the roads of said railroad companies, and receiving therefor income and revenue by the sale to passengers of the berths and accommodations therein;

And whereas the demands of the public and increased means of personal comfort and convenience in traveling, of avoiding repeated changes of cars over long routes of railroad, the necessity for affording, at fair and reasonable rates, these advantages, which cannot be extended by the railroad companies themselves, require that every

possible means should be adopted to meet such demands by avoiding the inconvenience and curtailing the expenses incident to the maintenance of the business, management, and organization of two separate corporations;

And whereas it is proposed that the party of the first part (having authority to do so under an act of the General Assembly of the Commonwealth of Pennsylvania entitled "An act to extend the charter of the Central Transportation Company, to empower them to lease their property, and increase their capital stock," and approved the ninth day of February, one thousand eight hundred and seventy, and duly accepted), shall demise, transfer, and set over unto the party of the second part, their successors and assigns, all their cars, contracts, and patent rights, and personal property, and that the second party (having authority to do so under the said act of Assembly, and by virtue of the power vested in them by their act of incorporation by the State of Illinois), should take the same;

And whereas at a meeting of the directors of the first party, held at Philadelphia on the eleventh day of February, one thousand eight hundred and seventy, and a meeting of the directors of the second party, held at Chicago on the sixteenth day of February, one thousand eight hundred and seventy, this present form of contract by and between the parties hereto was submitted for their approval, and the same being by them at said meetings approved, the respective presidents were authorized, for and as the act and deed of
57 the said parties of the first and second parts, duly to execute and deliver the same:

Now, this contract witnesseth: That the party of the first part, for and in consideration of the money, covenants, and agreements hereinafter mentioned and contained on the part of the second party, their successors and assigns, to be paid, kept, and performed, hath granted, demised, transferred, and set over, and by these presents do grant, demise, transfer, and set over, unto the second party, their successors and assigns, and the second party take—

Item 1. All and singular one hundred and nineteen railway sleeping cars, furniture, bedding, bed-clothing, and apparel thereunto belonging or appertaining.

Item 2. All and singular their rights, interests, and claims of, in, and to sixteen contracts (copies of each whereof are hereto attached and made part hereof, and numbered, respectively, Nos. 1, 2, 3, &c.) entered into by and between the party of the first part and the several railroad companies, parties, respectively, thereto, for and in respect to the use and employment of said cars on and over the respective lines of said railroad companies.

Item 3. All and singular their right, title, and claim of, in, and to seventeen patent rights secured by letters patent (an assignment whereof is hereunto attached and made part hereof, and numbered "A"), as fully and entirely as the first party are or may be entitled to the same, and to any renewal or extension thereof.

Item 4. And generally all the personal property, rights, credits, moneys, and effects, rights of action, moneys due and to become due from licenses heretofore granted:

To have and to hold the above-demised property and all income, revenue, and profit to be derived therefrom, to the party of the second part, their successors and assigns, as follows:

58 Item 1. The said one hundred and nineteen cars, furniture, bedding, bed-clothing, and apparel for and during the term of ninety-nine years from the first day of January, A. D. one thousand eight hundred and seventy, to be fully completed and ended.

Item 2. Each of the said contracts for and during the full term of the duration of each thereof, respectively.

Item 3. Each of the said patent rights for the full end and term of the duration of the letters patent therefor, respectively, and for the full end and term of any renewal and extension of the same, respectively.

Item 4. All of the said personal property, rights, credits, moneys, and effects, rights of action, moneys due and to become due from licenses heretofore granted for and during the said term of ninety-nine years from the first day of January, A. D. one thousand eight hundred and seventy, or during the existence of said licenses or of any renewal or extension thereof.

All and every of which shall be taken subject to all debts and pecuniary liabilities of the first party up to the said first day of January, A. D. one thousand eight hundred and seventy, as set forth in Exhibit B."

In consideration whereof the party of the second part covenants with the party of the first part as follows:

1st. That they shall and will pay to said first party, their successors and assigns, annually, the sum of two hundred and sixty-four thousand dollars ($264,000.00), in lawful money of the United States, during the entire term of ninety-nine years as aforesaid, the

59 same to be paid to the treasurer or other authorized officer, at the principal place of business or office of said first party, in quarter-yearly instalments of sixty-six thousand dollars ($66,000), the first quarter's payment to be made on the first day of April, one thousand eight hundred and seventy, and shall and will pay all debts and pecuniary liabilities of the first party due and owing by them up to the first day of January, A. D. eighteen hundred and seventy, as set out in Exhibit "B."

2nd. That they shall and will, so long as the said assigned contracts exist, and for the period of any new or other contracts with the said railroad companies, or either of them, or their successors and assigns, of like general character, in good faith continue and carry on the business as authorized by their charter.

3rd. That they shall and will during the said term of ninety-nine years keep, or cause to be kept, in good order and repair, or renewed or reconstructed as often as may be needful, the said one hundred and nineteen cars and furniture, bedding, bed-clothing, and apparel thereof.

4th. That in the event of the failure or omission of said second party, their successors or assigns, to pay any of the said quarterly payments for the period of thirty days after the same shall be due and payable, then and in such case this contract may, at the option

of the party of the first part, be declared null and void, and it shall and may be lawful for them, or for any person or persons, or corporation or corporations selected by them, either with or without any process or writs for such purpose, to take possession of and to hold the said one hundred and nineteen cars hereby demised, or as the same may be renewed or reconstructed as aforesaid, wherever the same may be found, with their furniture, bedding, bed-clothing, and apparel, and in such case the second party covenant and agree to deliver possession of said cars to such person or persons, or corporation or corporations, so selected, and to assign and transfer to the said first party the said contracts or any new contracts with the said railroad companies for and in respect to the use and employment of sleeping-cars over their lines of railroads, and any unexpired patent right or renewals and extensions of the same hereinbefore assigned and transferred, and shall and will cease to operate or employ, or cause to be operated or employed, any cars whatsoever on or over any of the said lines of railroads, it being understood that such action on the part of the first party in the said event shall not release or discharge the second party, their successors or assigns, from liability for damage and loss which may be sustained by the said first party owing to any such breach of contract or default.

That they will not assign or transfer this contract without the consent in writing of the party of the first part, nor make or create any debt, lien, or mortgage upon the property hereby demised which can or shall in any manner take precedence of the rights of the first party under the contract, or in anywise to deprive the party of the first part from their right to claim and take said property under the terms hereof.

And the said parties hereto further covenant and agree with each other as follows:

6th. That the parties thereto shall and will, at all proper times and manner, exert their influence to obtain renewals or new
60 contracts with said railroad companies for and in respect to the use and employment of the cars of the second party in and over their lines of railroads in carrying on their said business, and the said first party shall and will not engage in the business of manufacturing, using, or hiring sleeping-cars while this contract remains in full force and effect.

7th. That such renewals or new contracts may be made in the name of the party of the second part, their successors and assigns, but in the event of the termination of their contract under any of the clauses hereof the same shall be thereupon assigned and transferred unto the party of the first part.

8th. In the event that any of the railroad companies mentioned in the assigned contracts shall, at any time during this agreement, refuse to permit the cars of the second party to be run on and
61 over their respective lines of road, so that by reason of such prevention or refusal the profits, income, and revenue derived from and under any other and remaining contracts with other and remaining railroad companies mentioned in the assigned contracts shall fall below the sum of two hundred and sixty-four thousand

dollars ($264,000), then and in that event said second party shall have the right either to declare this contract null and void, and surrender to said first party the said hereinbefore-demised property, or shall and will pay in like manner, in lieu of the said sum of two hundred and sixty-four thousand dollars ($264,000), such sum or share of the net revenues from the remaining lines of roads as the parties hereto may at that time agree upon.

62 9th. And the party of the second part covenant and agree with the party of the first part that, on the expiration of the said term of ninety-nine years, they will redeliver to the said first party the said one hundred and nineteen cars, furniture, bedding, bed-clothing, and apparel in like good order as the same now are, with such additions, betterments, and improvements as shall be made thereto or in renewal or substitution thereof, together with any unexpired contracts between the said second party and any of the railroad companies mentioned in the assigned contracts, for and in respect to the use and employment of said cars on and over the said lines of railroad.

In witness whereof the said parties hereto have caused their respective corporate seals to be hereto affixed, and the same to be attested by the signatures of their respective presidents and secretaries, the day and year first above written.

(S'g'd) C. W. CHILDS, *Pres't.* [SEAL.]

Witnesses:
(S'g'd) W. J. HOWARD.
(") J. EARNEST GOODMAN.

Attest: (S'g'd) J. F. COTTINGER, *Secretary.*

(S'g'd) GEORGE M. PULLMAN, *Pres't.* [SEAL.]

Attest: (S'g'd) CHARLES W. ANGELL, *Secretary.*

Witnesses:
(S'g'd) WIRT DEATER.
(") W. F. WHITEHOUSE.

List of Contracts with Railroad Companies Referred to in the Foregoing Agreement.

No. 1. Pennsylvania Railroad Company.
No. 2. Northern Central Railway Company.
No. 3. Baltimore and Ohio Railroad Company.
No. 4. New York and Washington Through Line, April 12, 1864, for ten years.
No. 5. Pittsburgh, Fort Wayne and Chicago Railway Company.
No. 6. Cincinnati, Hamilton and Dayton and Dayton and Michigan Railroad Companies, September 26, 1864, for twenty years.
No. 7. Bellefontaine and Indiana and Indiana, Pittsburgh and Cleveland Railroad Companies.
No. 8. Marietta and Cincinnati Railroad Company.
No. 9. Central Ohio Railroad Company.

No. 10. Indiana and Cincinnati Railroad Company.
No. 11. Ohio and Mississippi Railway Company.
No. 12. Columbus, Chicago and Indiana Central Railway Company.
No. 13. Terre Haute and Indianapolis Railroad Company, September 1, 1868, for ten years.
No. 14. St. Louis, Vandalia and Terre Haute Railroad Company, September 1, 1868, for ten years.
63 No. 15. Jefferson, Madison and Indiana Railroad Company.
No. 16. Louisville, Cincinnati and Lexington Railroad Company.
Except Nos. 4, 6, 13, and 14, the above contracts are terminable on written notice by either party.

EXHIBIT "A"

Is an indenture dated Febr. 17th, 1870, between the Central Transportation Company and George M. Pullman, trustee for Pullman's Palace Car Company, conveying to the latter corporation all the interest of the former in the following patents:

No. 16159.	Dec.	2, 1856.	To T. T. Woodruff.
" 16160.	"	" "	" " "
" 24257.	May	31, 1859.	" " "
" 26942.	Jan.	29, 1860.	" " "
" 24563.	June	28, 1859.	" Edward C. Knight.
" 25570.	Sept.	27, 1859.	" Edward C. Knight.
" 27297.	Feb.	28, 1860.	" " "
" 11699.	Sept.	19, 1854.	" H. B. Myer.
" 21099.	Aug.	2, 1858.	" Eli Wheeler.
" 29137.	July	17, 1860.	" Wm. A. Brown.
" 33979.	Dec.	24, 1861.	" " "
" 20259.	May	18, 1858.	" J. B. Creighton.
" 21600.	Sept.	25, "	" " "
" 22364.	Dec.	21, "	" Plyman B. Green.
" 71258.	Nov.	19, 1847.	" Jacob Woodruff.
" 30517.	Oct.	23, 1860.	" Edward Burke.

64 Also a license to use patented car-couplings, granted to Central Trans. Co. Aug. 16th, 1866, under patents issued July 13, 1860, to J. W. Van Houten *et al.*

EXHIBIT B.

Debts of the Central Transportation Company, Dec. 31, 1869.

Pennsylvania R. R. Co.	$21,617 55
Ohio and Mississippi R'y Co., about	3,037 86
Pitts., Cin. & St. Louis " Co.	5,217 76
Col., Ch'go & Ind. Cen. " "	5,000 00
Harlan & Hollingsworth Co.	4,630 99
Pitts., F't Wayne & Ch'go R'y Co.	837 97
Jeff., Mad. & India-polis R. R.	361 95

Marrietta & Cin. R. R. Co. (about)	$1,200 00
Bellefontaine Line "	250 00
George Harding	250 00
Wilhelm & Newman	1,615 16
Crerar, Adams & Co.	129 38
Murdoch & Lacey	271 75
J. E. Wolraven	152 08
Leedan, Shaw & Stewart	127 43
W. J. Howard	1,785 75
J. E. Goodman	43 45
Pitts., Cin. & St. L. R'y Co. (about)	400 00
Total	$46,983 08

65 In the years 1879 and 1880 sleeping-cars were used upon lines of road partly or wholly in Pennsylvania, and not covered by the contract with the Central Transportation Company, as follows:

Philadelphia and Reading and Central Railroad of New Jersey (Bound Brook route between New York and Philadelphia) ---- 5 cars.

Lehigh Valley railroad and Pennsylvania and New York canal and railroad, between Wilkes Barre and New York, 2 cars; between Waverly, N. Y., Wilkes Barre, and Philadelphia, 3 cars ---- 5 cars.

Allegheny Valley railroad, Buffalo, Pittsburgh, and Western railroad ---- 3 cars.

New York, Lake Erie and Western railroad, through cars running a few miles in Pennsylvania, between Port Jervis and Lackawaxen ---- 4 cars.

Pullman's Palace Car Company.

Statistical statement of the number of cars operated in Pennsylvania.

Year.	Whole number of cars.	Number of cars operated in Pennsylvania.
1875	591	97
1876	624	97
1877	644	98
1878	633	100
1879	631	99
1880	642	98
1881	696	98
1882	763	113

The number of cars used in Pennsylvania during the years 1870 to 1874 was less than in 1875.

Auditor's office, March 12, 1883.

C. H. DAVIE,
Auditor Pullman's Palace Car Company.

STATE OF ILLINOIS, } ss:
County of Cook, }

Subscribed and sworn to before me this 13th day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

Pullman's Palace Car Company.

Statement showing number of cars operated in lines running in the State of Pennsylvania during the year ending 31st July, 1878.

No. of line.	Destination.	No. of cars required to fill line.	Headquarters.
3	Washington and Chicago	3	Chicago.
4	Baltimore and Pittsburgh	2	Baltimore.
5	Washington and Canandaigua	2	Washington.
41	Chicago and New York	15	Chicago.
120	Pittsburgh and Washington	2	Washington.
121	New York and Louisville	15	Jersey City.
126	New York and Philadelphia	2	Jersey City.
127	New York and Philadelphia (day)	7	Jersey City.
128	New York and St. Louis	10	Jersey City.
131	New York and Washington	2	Jersey City.
132	New York and Washington	10	Jersey City.
133	New York and Washington (limited ex.)	7	Jersey City.
137	New York and Washington	2	Jersey City.
143	Pittsburgh and Philadelphia	3	Philadelphia.
147	Pittsburgh and Titusville	2	Pittsburgh.
148	Philadelphia and Clifton	2	Philadelphia.
149	Philadelphia and Watkins	2	Philadelphia.
150	Philadelphia and Erie	2	Philadelphia.
234	New York and Geneva	2	Jersey City.
238	Philadelphia and Rochester	2	Philadelphia.
239	Pittsburgh and Cleveland	2	Pittsburgh.
240	Pittsburgh and Cleveland	2	Pittsburgh.
242	Philadelphia and New York	2	Jersey City.
		100	

N. B. The above, being for the year 1878, is given for illustration; prior and following years do not materially differ therefrom.

Auditor's office, March 28, 1883.

C. H. DAVIE,
Auditor P. P. C. Co.

STATE OF ILLINOIS, } ss:
Cook County, }

Subscribed and sworn to before me this 28th day of March, A. D. 1883.

A. S. WEINSHEIMER, [SEAL.]
Notary Public.

66 *Pullman's Palace Car Company*

Statement of gross earnings of Pullman's Palace Car Company each year from 1st January, 1870, to 31st December, 1880, and also of gross receipts in the State of Pennsylvania for the same period.

Year.	Gross earnings.	Gross receipts in Pennsylvania.
1870	$805,523 51	Estimated. $164,592 75
1871	1,384,314 79	Estimated. 164,592 75
1872	2,017,073 73	Estimated. 216,742 25
1873	2,557,008 02	Estimated. 231,333 50
1874	2,640,132 88	223,389 50
1875	2,523,578 09	239,803 55
1876	2,542,333 86	466,226 85
1877	2,562,139 20	236,303 95
1878	2,152,329 79	223,045 40
1879	2,188,234 99	225,621 85
1880	2,621,446 01	276,234 55
	$23,994,114 87	$2,667,886 40

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman's Palace Company.

STATE OF ILLINOIS, } ss:
County of Cook, }

Subscribed and sworn to before me this 4th day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

Pullman's Palace Car Company.

Statement of net earnings of Pullman's Palace Car Company each year from January 1, 1870, to December 31, 1880, and also net earnings in State of Pennsylvania for the same period after payment of rental to Central Transportation Company, which is shown separately as applicable to Pennsylvania business:

Year.	Net earnings P. P. C. Co.	Proportionate amount of net earnings in Pennsylvania.	Deduct rental of Central Transportation Company.	Net loss in Pennsylvania.	Net gain in Pennsylvania.
1870	$348,036 53	$102,581 21	$154,000 00	$51,418 79	
1871	559,203 89	97,875 59	264,000 00	166,124 41	
1872	983,675 58	134,067 49	264,000 00	129,932 51	
1873	1,135,891 91	126,648 76	264,000 00	137,351 24	
1874	1,132,420 78	118,155 05	264,000 00	145,844 95	
1875	1,149,711 68	134,338 26	264,000 00	129,661 74	
1876	1,192,623 43	267,123 44	264,000 00		$3,123 44
1877	1,197,022 04	134,748 84	264,000 00	129,251 16	
1878	979,856 71	128,900 55	264,000 00	135,099 45	
1879	954,848 68	125,671 55	264,000 00	138,328 45	
1880	1,368,774 93	172,053 46	264,000 00	91,946 54	
	11,002,066 16	1,542,164 20	2,794,000 00	1,254,959 24	3,123 44
	Less gain in 1876			3,123 44	
				1,251,835 80	

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman's Palace Car Co.

STATE OF ILLINOIS, } ss:
Cook County, }

Subscribed and sworn to before me this 14th day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

67 *Pullman's Palace Car Company.*

Statement of number of miles operated by Pullman's Palace Car Company each year from 1st January, 1870, to 31st December, 1880, and also number of miles operated in State of Pennsylvania for the same period.

Years.	Total miles.	Miles in Pennsylvania.
1870	Estimated. 47,525	Es'd 5,000
1871	47,525	Es'd 5,000
1872	57,030	6,914
1873	63,890	7,875
1874	56,480	6,890
1875	38,794	4,487
1876	41,993	4,753
1877	46,658	5,275
1878	48,602[2]	5,152
1879	50,780[2]	5,042
1880	57,099	5,127
	556,377	61,515

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman's Palace Car Company.

STATE OF ILLINOIS, } ss:
Cook County, }

Subscribed and sworn to before me this fourteenth day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

Pullman's Palace Car Company.

Statement of capital stock of Pullman's Palace Car Company, each fiscal year, from 31st July, 1870, to 31st July, 1880, inclusive.

Years.	Amount.
1870	$3,000,000
1871	4,000,000
1872	4,000,000
1873	4,000,000
1874	4,897,000
1875	5,826,200
1876	5,938,200

Years.	Amount.
1877	$5,938,200
1878	5,938,200
1879	5,938,200
1880	5,990,200

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman Palace Company.

STATE OF ILLINOIS, } ss:
Cook County, }

Subscribed and sworn to before me this 14th day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

68 *Pullman's Palace Car Company.*

Statement of assets as of July 31, 1871—Financial statement.

Assets:

Two thousand three hundred and twenty shares stock in Pullman's Palace Car Company	$232,000 00
Amount invested in shares of other incorporated car associations controlled and operated by this company	1,038,704 54
Construction material and operating supplies, including amount paid on cars in process of construction	230,862 34
Car works at Detroit	109,328 00
Cash on hand	92,142 06
Two hundred and forty-one cars and equipments	4,334.223 84
Total assets	$6,037,260 78

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman's Palace Car Company.

STATE OF ILLINOIS, } ss:
Cook County, }

Subscribed and sworn to before me this 14th day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

Pullman's Palace Car Company.

Statement of assets as of July 31, 1872—Financial statement.

Assets :

Three hundred and sixty-five cars and equipments	$6,295,682 55
Construction materials and operating supplies, including amount paid on cars in process of construction	254,286 58
Car works at Detroit	215,930 26
Amount invested in shares of other incorporated car associations controlled and operated by this company	1,755,454 54
Real estate	19,861 07
Office furniture and fixtures	17,725 93
Patents	45,441 10
Total assets	$8,604,382 03

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman's Palace Car Company.

STATE OF ILLINOIS, } ss :
Cook County, }

Subscribed and sworn to before me this fourteenth day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

69 *Pullman's Palace Car Company.*

Statement of assets as of July 31, 1873—Financial statement.

Assets :

Four hundred and thirty cars and equipments, including franchises	$7,947,374 89
Construction material and operating supplies, including amount paid on cars in process of construction	368,628 88
Car works at Detroit	297,697 45
Amount invested in shares of other incorporated car associations controlled and operated by this company	2,040,510 27
Real estate	20,164 71
Office furniture and fixtures	22,100 43
Patents	145,441 10
Total assets	$10,841,917 73

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman's Palace Car Company.

STATE OF ILLINOIS, } ss:
Cook County, }

Subscribed and sworn to before me this fourteenth day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

Pullman's Palace Car Company.

Statement of assets as of July 31, 1874—Financial statement.

Assets:

Four hundred and thirty-nine cars and equipments, including franchises	$8,076,971 39
Construction material and operating supplies, including amount paid on cars in process of construction	444,911 95
Car works at Detroit	299,257 45
Amount invested in shares of other incorporated car associations controlled and operated by this company	1,996,551 23
Real estate	21,419 12
Furniture and fixtures in the several offices of the company, twenty-eight in number, including the new general office in Chicago	57,463 59
Patents	149,364 77
Total assets	$11,045,939 50

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman's Palace Car Company.

STATE OF ILLINOIS, } ss:
Cook County, }

Subscribed and sworn to before me this 14th day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

70 *Pullman's Palace Car Company.*

Statement of assets as of July, 31, 1875—Financial statements.

Assets:

Four hundred and twenty-two cars and equipments, including franchises	$7,877,615 84
Construction material and operating supplies, including amount paid on cars in process of construction	446,920 22
Car works at Detroit	334,400 54
Real estate	21,901 66

Furniture and fixtures in the several offices of the company, fifty-two in number	$61,292 10
Patents	149,364 77
Amount invested in other car associations controlled and operated by this company	2,240,235 05
Balance of accounts and bills receivable and payable	55,979 26
Cash on hand	69,681 28
Total assets	$11,257,390 72

Auditor's office, March 14, 1882.

C. H. DAVIE,
Auditor Pullman's Palace Car Company.

STATE OF ILLINOIS, } ss:
Cook County, }

Subscribed and sworn to before me this 14th day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

Pullman's Palace Car Company.

Statement of assets as of July 31, 1876—Financial statement.

Assets:

Four hundred and fifty-one cars and equipments, including franchises, cost	$8,343,270 55
Construction material and operating supplies, including amount paid on cars in process of construction	420,297 92
Car works at Detroit, cost	341,270 48
Patents, cost	149,364 77
Furniture and fixtures in the several offices of the company, 52 in number, cost	62,442 65
Estate No. 506 Michigan avenue, cost	21,901 66
Amount invested in other car associations controlled and operated by this company	2,303,657 69
Cash on hand	25,484 57
Total assets	$11,667,790 29

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman's Palace Car Company.

STATE OF ILLINOIS, } ss:
Cook County, }

Subscribed and sworn to before me this 14th day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

71 *Pullman's Palace Car Company.*

Statement of assets as of July 31, 1877—Financial statement.

Assets:	
Four hundred and sixty cars and equipments, including franchises, cost	$8,491,252 92
Car works at Detroit, cost	343,423 82
Patents, cost	164,383 43
Furniture and fixtures in the several offices of the company, fifty-two in number, cost	62,686 53
Real estate, cost	21,901 66
Amount invested in shares of other incorporated car associations controlled and operated by this company, cost	2,392,577 69
Construction material and operating supplies, including amount paid on cars in process of construction	266,122 58
Balance of accounts and bills receivable and payable	147,892 83
Cash on hand	70,042 61
Total assets	$11,960,284 07

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman's Palace Car Company.

STATE OF ILLINOIS, } ss:
Cook County, }

Subscribed and sworn to before me this 14th day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

Pullman's Palace Car Company.

Statement of assets as of July 31, 1878—Financial statement.

Assets:	
Four hundred and sixty cars and equipments, including franchises, cost	$8,491,252 92
Car works at Detroit, cost	344,883 54
Patents, United States and foreign, cost	164,383 43
Furniture and fixtures in the several offices of the company, 52 in number, cost	63,195 18
Real estate, Chicago, cost	22,001 66
Amount invested in shares of other incorporated car associations controlled and operated by this company, cost	2,392,937 69

Construction materials and operating supplies, including amount paid on cars in process of construction	$294,208 40
Balance of accounts and bills receivable and payable	346,007 91
Cash on hand and in bank	94,294 64
Total assets	$12,213,165 37

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman's Palace Car Company.

STATE OF ILLINOIS, *Cook County,* } ss:

Subscribed and sworn to before me this fourteenth day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

72 *Pullman's Palace Car Company.*

Statement of assets as of July 31, 1879—Financial statement.

Assets:

Four hundred and sixty-four cars and equipments, including franchises, cost	$8,542,301 84
Car works at Detroit, cost	345,823 54
Patents, United States and foreign, cost	164,383 43
Furniture and fixtures in the several offices of the company, 52 in number, cost	63,360 53
Real estate, Chicago, cost	22,001 66
Amount invested in shares of other incorporated car associations controlled and operated by this company, cost	2,379,622 54
Construction material and operating supplies, including amount paid on cars in process of construction	280,887 29
Balance of accounts and bills receivable and payable	138,409 38
Cash on hand and in bank	167,754 44
Total assets	$12,104,544 65

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman's Palace Car Company.

STATE OF ILLINOIS, *Cook County,* } ss:

Subscribed and sworn to before me this fourteenth day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

Pullman's Palace Car Company.

Statement of assets as of July 31, 1880—Financial statement.

Assets:

Four hundred and seventy-two cars and equipments, including franchises	$8,588,614 08
Detroit car works	364,468 79
Chicago car works in course of construction, including three hundred acres of land, expended to date	230,125 86
Patents, United States and foreign	184,383 43
Furniture and fixtures in the several offices of the company, fifty-two in number	63,655 64
Real estate	22,001 66
Amount invested in shares of other incorporated car associations and controlled and operated by this company	2,440,621 26
Construction material and operating supplies, including amount paid on cars in process of construction	718,879 47
Balance of current accounts	385,176 30
Cash on hand and in bank	282,386 77
Total assets	$13,280,313 26

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman's Palace Car Company.

STATE OF ILLINOIS, } ss:
Cook County, }

Subscribed and sworn to before me this 14th day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

73 *Pullman's Palace Car Company.*

Statement of assets as of July 31, 1881—Financial statement.

Assets:

Five hundred and two cars and equipment, including franchises, cost	$9,020,600 58
Amount invested in shares of other incorporated car associations controlled and operated by this company, cost	2,491,904 05
Stock in Union foundry and Pullman car-wheel works, cost	22,500 00
Real estate and plant, Detroit shops, cost	370,520 84
Real estate and plant, four hundred and ninety-two acres of land, Chicago car works, homes for workmen, and other improvements at Pullman, Illinois, cost	2,545,904 96

Real estate and plant, St. Louis repair shops, cost		$43,042 99
Real estate, Chicago, cost		22,001 66
Lumber, cost	613,198 26	
Other construction material and operating supplies, including cars in process of construction, cost	841,157 75	
		1,454,356 01
Patents, United States and foreign, cost		184,383 43
Furniture and fixtures in the several offices of the company, fifty-two in number, cost		65,725 69
Cash		87,156 89
		$16,308,097 10

Auditor's office, March 14, 1883.

C. H. DAVIE,
Auditor Pullman's Palace [Car] Company.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

Subscribed and sworn to before me this 14th day of March, A. D. 1883.

A. S. WEINSHEIMER,
Notary Public.

Statement of Tax on Capital Stock Paid by Central Transportation Company before Lease to Pullman's Palace Car Company.

1864 1865 1866	$8,942 59
1867	3,600 00
1868	4,128 00
1869	5,174 22
Total	$21,444 81

Statement of Tax on Capital Stock Paid by Central Transportation Company.

1870	$11,593 17
1871	12,320 00
1872	12,320 00
1873	12,320 00
1874	12,320 00
1875	12,320 00
1876	12,320 00
1877	11,440 00
1878	8,800 00
1879	8,800 00
1880	8,800 00
	$123,353 17

74 *Copy of Contract.*

Pennsylvania Railroad Co. with T. T. Woodruff & Co.

T. T. Woodruff, G. R. Dykeman, both of Alton, Illinois; John S. Miller, of Litchfield, Illinois, and O. W. Childs, of Syracuse, New York, trading under the firm of T. T. Woodruff & Co., owner- of Woodruff's patent for seats and couches for railroad cars, for themselves, their associates and assigns, by their duly authorized agent, T. T. Woodruff, do hereby propose to the Pennsylvania Railroad Co. to put and run upon their road, between Philadelphia and Pittsburgh, or such other points as said Pennsylvania Railroad Co. may desire, sleeping cars with said patent seats and couches, upon the following terms and conditions, to wit:

1st. No charge to be made to the Pennsylvania Railroad Co. for the use of the cars, but said company to keep them in proper running order and good condition, including renewal of wheels and axles, and to repair all damages they may sustain (ordinary wear and tear excepted), except that Woodruff & Co. shall keep the upholstery and inside of the cars in first-class condition and repair at their own expense; the Pennsylvania Railroad Co. to fur-
75 nish fuel and lights; cars to be subject to the approval of the general car inspector of the Pennsylvania Railroad Co. as to safety and equipment.

2nd. Woodruff and Co. to be entitled to charge and receive from such passengers as shall choose to occupy the couches a reasonable compensation for the same, not exceeding fifty cents (50c.) for each person, or couch occupied, which charge shall entitle the party to the seat during the trip. Further, the charge shall not be greater than the usual price charged upon other roads for similar accommodation, and especially not greater than on competing lines.

3rd. The Pennsylvania Railroad Co. to have the right to seat any of the regular first-class passengers in any of the seats of the sleeping cars not required to be used as couches, but it is only intended by this provision to secure the carrying in the sleeping cars an equal number of passengers to the average number carried in the other first-class passenger cars of the train. Regulations shall hereafter be agreed upon as shall give such discretion in the admission of passengers to the sleeping cars as will favor the renting of the couches and such regulations as may be necessary to preserve the reputation of sleeping cars by excluding improper persons from using them.

76 4th. The Pennsylvania Railroad Co. to carry free two attendants or persons in charge of each sleeping car on the part of Woodruff & Co., for the purpose of renting the couches and keeping the car in order; and also to carry free the person having the general oversight of said business when necessarily passing over said road on business relating to the running of sleeping cars thereon; all of which shall be considered as employés of the Pennsylvania Railroad Company while travelling on the road, and said company shall not be held responsible for personal injuries that may occur.

5th. Messieurs Woodruff & Co. shall put on the road not less than one car for each night train by the first day of January next, and as much earlier as practicable. They shall put on additional cars as the business of the road shall, in the opinion of the general superintendent, require.

6th. Woodruff & Co. shall employ on said sleeping cars no persons but such as shall conduct themselves with decorum and propriety, and none but such as shall be approved by the general superintendent of the company, and will be subject to removal at his option.

7th. All the improvements which the patentee of the said seats and couches has made or shall hereafter make, and all useful in-
77 ventions or improvements which shall be made in sleeping cars, shall be promptly introduced by Woodruff & Co. upon the sleeping cars of this road, so far as the same shall conduce to the safety or comfort of passengers, or tend to increase the passenger traffic of the road, and their compliance with this provision shall give them the exclusive right of running sleeping cars on said road during the continuance of said patent, unless this contract should be terminated by notice herein provided. But if the Pennsylvania Railroad Co. shall at any time deem it [to] their interest, from the want of sufficient patronage or from any other cause, to discontinue the running of sleeping cars, they may, by giving three months' previous notice, require such discontinuance, but such notice shall not be given until one year after the cars shall commence running. Woodruff & Co. may also on a like notice cease running said cars.

8th. The regulations as to the persons to be admitted into the sleeping cars, and as to the occupation of seats when not required for sleeping, and all other proper rules and regulations for the government of said sleeping cars shall be subject to the approval of the general superintendent of the said road, and it is expressly understood that all rules and regulations of said Pennsylvania
78 Railroad Company shall be strictly observed and complied with on the part of said Woodruff & Co., and all persons in their service.

In witness whereof we, the undersigned, have hereunto affixed our signatures, for and on behalf of our respective companies, this fifteenth day of September, A. D. 1858, subject to the approval of the president of the Pennsylvania Railroad Company, and this contract shall not be binding until approved by his signature.

(S'g'd) THOMAS A. SCOTT,
Gen. Sup't Penna. R. R. Co.

T. T. WOODRUFF & CO.,
(S'g'd) By T. T. WOODRUFF.

Approved:
(S'g'd) J. EDGAR THOMPSON,
President Penna. R. R. Co.

(Endorsement.)

The within contract is hereby assigned and transferred to Pullman's Palace Car Company, as per indenture made the seventeenth

day of February, 1870, between the Central Transportation Company and Pullman's Palace Car Company.

(S'g'd) O. W. CHILDS, *President.*

Attest: (S'g'd) J. F. COTTRINGER, *Secretary.*

LAW ASSOCIATION OF PHILADELPHIA

79 (Copy.)

Memorandum of an agreement made this 30th day of June, A. D. 1862, by and between T. T. Woodruff & Co., of Philadelphia, State of Pennsylvania, by their duly authorized attorney, T. T. Woodruff, and the Northern Central Railway Company, by A. B. Warford, president, and J. N. Du Barry, superintendent of the said railway company, witnesseth:

That the said T. T. Woodruff and Co., for thelvemses, their heirs, executors, administrators, and assigns, for and in consideration of the benefits hereinafter reserved, do hereby agree to furnish to the said railway company two sleeping cars, known as Woodruff's patent convertible seat and couch car, said cars to be constructed of the best materials and in the most thorough and workmanlike manner, and equipped with all the latest improvements and in every respect ready for use, the said cars to be delivered to the said railway company on or before the first day of October next.

The said railway company agree to run the aforesaid sleeping cars in the night trains and in such manner as will best accommodate the passengers desiring couches in sleeping cars, and to furnish fuel for the stoves and oil for the lights for said cars, and to keep the said cars in running order and repair, including renewals
80 of worn-out parts, all of which are to be at the expense of the said railway company, except such as are hereinafter provided for.

The said T. T. Woodruff & Co. are to keep the seats and couches and the upholstery & bedding clean and in perfect order and repair, at their own expense, so far as usual wear and tear are concerned, and not otherwise; the said railway company are to take all risks and casualties incident to passengers and cars. The said T. T. Woodruff & Co. are to furnish, at their own expense, two employés upon each of the said cars, one to act as porter and the other to preserve order and collect couch fees, as is hereinafter provided for, both of whom shall be entitled to ride free when on duty; such employes to be treated as the employés of the said railway company, and to be subject to the rules and regulations thereof.

No charge to be made against the said railway company for the use of the said cars, but the said cars are to be treated in all respects as the cars of the said railway company during the continuance of this contract, but nothing in this agreement shall be construed as affecting the title of the said T. T. Woodruff & Co. to the said cars after the expiration of this contract.

The said T. T. Woodruff & Co. are to have the entire control of

the admission of passengers into the said sleeping cars, except
81 at such times when the admission of passengers may become necessary from an accident to one or more cars of the same train, or when such admission will not interfere with or molest such passengers as may desire couches.

The said T. T. Woodruff & Co. are to be entitled to collect fifty cents from each and every passenger who may from choice occupy a seat in said sleeping cars, or fifty cents for each couch occupied, which sum shall entitle such passenger to occupy such seat during such trip.

Such rules and regulations shall be agreed upon as will favor the renting of the couches of said cars. The said T. T. Woodruff & Co. are to furnish additional cars upon the same terms as herein provided for, for the first two cars, whenever it shall be found that the said two cars are not sufficient to well and fully accommodate the passengers requiring couches in sleeping cars. They are also to promptly introduce any improvements which may be made in sleeping cars, so far as such improvements shall conduce to the safety and comfort of passengers, or tend to increase the travel of the said road.

The compliance with the provisions of this contract on the part of the said T. T. Woodruff & Co. shall give them an exclusive right to furnish sleeping cars to the said railway company during
82 the continuance of the said Woodruff's patents.

It is further agreed that this contract or agreement may be terminated and made void for want of sufficient patronage, or the non-compliance by either party with the provisions of this contract, by six months' written notice being given to the opposite party by the party desiring to annul the agreement. But nothing in this contract shall be so construed as to give the said railway company the right to terminate and make void this contract for the substitution of other sleeping cars under any contract other than those constructed under the patents granted to T. T. Woodruff at any time during the continuance of the said Woodruff's patents, without prejudice to the right of the said T. T. Woodruff & Co. to recover such damages as they may sustain, or may have sustained.

The person having the general oversight of the said sleeping cars shall be entitled to ride free when on business appertaining to the said sleeping cars.

It is expressly understood and agreed that no charge is to be made against the said railway company by the said T. T. Woodruff & Co. for the past use of sleeping cars, nor is any charge to be made against the said T. T. Woodruff & Co. by the said railway company
83 for tolls or any other expenses by reason of sleeping cars under the patents of T. T. Woodruff having been run on their railway previous to the date of this agreement.

It is further agreed that no charge shall be made by either party to this agreement against the other from the date of this agreement until the two cars are placed upon the railway, as is hereinbefore provided for.

In testimony whereof we have hereunto set our hands and seals the day and year above written.

(S'g'd) J. D. CAMERON,
Vice-Pres. N. C. R'y Co.
" J. N. DU BARRY, *Superintendent.*
T. T. WOODRUFF & CO.,
" By T. T. WOODRUFF, *Attorney.*

Witnesses present at signing:
(S'g'd) EDMUND L. DU BARRY.

(Endorsement:) The within contract is hereby assigned and transferred to Pullman's Palace Car Company, as per indenture made the seventeenth day of February, 1870, between
84 the Central Transportation Company and Pullman's Palace Car Company. (S'g'd) O. W. Childs, president. Attest: (S'g'd) J. F. Cottringer, secretary.

Opinion of Court of Common Pleas.

In Dauphin County — Common Pleas. August T. 1881.

COMMONWEALTH
v.
PULLMAN'S PALACE CAR COMPANY. } 36.

Appeal from settlement of account for tax on capital stock.

By the COURT:

This issue was tried by the court without a jury, as provided by the act of April 22, 1874. It is an appeal by the defendant from a settlement made by the auditor general and State treasurer against it for tax on capital stock for the year 1870 to 1880, both inclusive. The facts proved, so far as necessary for the determination of the question involved, are these: Defendant is a corporation of the State of Illinois, having its principal office in
85 Chicago. Its business was during all the time for which tax is charged to furnish sleeping coaches and parlor and dining-room cars to the various railroad companies with which it contracted on the following terms: The defendant furnished the coaches and cars, and the railroad companies attached and made them part of their trains, no charge being made by either party against the other. The railroad companies collected the usual fare from passengers who travelled in their coaches and cars, and the defendant collected a separate charge for the use of the seats, sleeping berths, and other conveniences. Business has been carried on continuously by defendant in this way in Pennsylvania since February 17, 1870, and it has about one hundred coaches and cars engaged in this way in the State during that time.

86 About the time defendant began operations in this State a corporation thereof, called the Central Transportation Company, was engaged in a like business here, and had contracts with many of

the railroad companies in the State to furnish and run sleeping and parlor cars on the terms stated above.

Defendant found it for its interest to purchase said contracts from said company and lease its cars for a period of ninety-nine years at an annual rental, covenanting to keep the cars in repair and return them, or others in their place, in as good order as when received, at the end of that period. These cars, or most of them, as well as some of the other cars belonging to defendant, have ever since been running in, into, through, and out of this State.

On the facts defendant claims that no part of its capital
87 stock is invested in this State. The argument is that its cars are personal property, and, as they are not permanently located in this State, but pass into, through, and out of it, this personal property has no taxable *situs* in Pennsylvania, and could not be taxed specifically in any given locality; and therefore it is contended, as the tax on capital stock is a tax on the property in which that capital is invested, the latter cannot be taxed.

It has certainly been settled by Commonwealth *v.* Standard Oil Company, 12 W. N. C., 293, that "a tax upon the capital stock of a company is a tax upon its property and assets;" but it has never yet, so far as we know, been decided that the capital stock of a company and its property and assets are identical, or that any given part of the former represents any specific articles of the latter. It would be carrying the principle to a dangerous extreme so to decide.

88 We hold, therefore, that the proportion of the capital stock of the defendant invested and used in Pennsylvania is taxable under these acts, and that the amount of the tax may be properly ascertained by taking as a basis the proportion which the number of miles operated by defendant in this State bears to the whole number of miles operated by it, without regard to the question when any particular car or cars were used; nor is it, in our opinion, of any consequence that some of the cars were leased for ninety-nine years from another company on the conditions stated in the finding of the facts above. We need not even stop to determine the precise nature of the property which defendant has in them. Whatever it be it is an asset of the company, and is therefore represented by and helps to give value to its capital stock. It cannot change the case that the lessor company pays tax on
89 its capital stock; that represents its interest, if any, in these cars. The questions involved need no further elaboration. We therefore briefly state the conclusions of law which we think are involved in the case:

1. The defendant is liable to tax on the proportion of its capital stock invested in this State, as represented by the coaches and cars owned and used by it here.

2. The fact that some of said coaches and cars have been leased from the Central Transportation Company for ninety-nine years does not affect such liability.

3. The laws under which said taxes are imposed and said liability

accrues are not in conflict with the eight- section of article one of the Constitution of the United States.

4. Said company is not chargeable with penalty for failure to report, and with interest only from sixty days after the date of
90 the settlement.

Determining the amount of the tax on the principle above stated, it is as follows:

Tax for years 1870 to 1880, inclusive	$16,321 89
Interest from May 1, 1881, to May 10, 1883	3,971 65
Attorney general's commission	816 09
Total	$21,109 63

For which amount let judgment be entered, unless exceptions be filed according to law.

J. W. SIMONTON, *P. J.*

(Endorsement:) 36. Aug. term, 1881. Commonwealth *v.* Pullman Palace Car Company. Opinion. Filed May 11, 1883.

(*Defendant's Exceptions and Opinion.*)

In — Common Pleas of Dauphin County. Aug. T., 1881.

COMMONWEALTH OF PENNSYLVANIA
v.
PULLMAN'S PALACE CAR COMPANY. } No. 36.

This case having been heard under the act of April 22,
91 1874, without the intervention of a jury, defendant files the following exceptions to the finding of facts and decision of the court:

First. The court erred in not finding as a fact that the defendant transacted no business in Pennsylvania, except upon the roads and in cars covered by its lease with the Central Transportation Company.

Second. The court erred in not finding as a fact that defendant leased one hundred and nineteen cars from the Central Transportation Company, and that said cars were more than sufficient for the transaction of all the business done by it within the State of Pennsylvania, no more than one hundred cars being used in said State in any year.

Third. The court erred in not finding as a fact that the cars used in the State of Pennsylvania were also used in other States,
92 their use in Pennsylvania being confined to passages to or from points in other States.

Fourth. The court erred in not finding as a fact that the rental paid to the Central Transportation Company for the use of its cars exceeded the gross receipts of defendant from all its business within the State of Pennsylvania.

Fifth. The court erred in not finding as a fact that the Central Transportation Company is a corporation of the State of Pennsyl-

vania, and has paid to the State the full tax upon its entire capital stock for each of the years embraced in this suit.

Sixth. The court erred in its first conclusion of law as follows:

"1. The defendant is liable to tax upon the properties of its capital stock invested in this State, as represented by the coaches and cars owned and used by it here."

Seventh. The court erred in its second conclusion of law as follows:

93 "2. The fact that some of said coaches and cars have been leased from the Central Transportation Company for ninety-nine years does not affect such liability."

Eight-. The court erred in their conclusions of law as follows:

"3. The laws under which said taxes are imposed and said liability accrues are not in conflict with the eight- section of article one of the Constitution of the United States."

Ninth. The court erred in not finding as a conclusion of law that Pullman's Palace Car Company is not liable for taxation upon its own capital stock by reason of the use of cars leased from the Central Transportation Company.

Tenth. The court erred in not finding as a conclusion of law that the defendant, being a corporation of the State of Illinois, is not taxable upon any proportion of its capital stock by reason of

94 its permitting its cars to be transported into, out of, or through this State so long as they do not obtain a *situs* here.

Eleventh. The court erred in directing judgment to be entered in favor of the Commonwealth for $21,159.63.

Twelfth. The court erred in not directing judgment to be entered in favor of defendant.

M. E. OLMSTED,
Attorney for Defendant.

By the Court:

We found, as one of the facts in the opinion filed, that "the cars used in this State have, during all the time for which tax is charged, been running into, through, and out of this State," a finding which, in substance, meets the third exception. We did not find the other facts stated in the exceptions, because we considered them irrelevant. We believe, however, that they are facts proved in the case, and do so now find; but they cannot affect our conclu-

95 sions of law, and we hereby overrule all the exceptions to these conclusions and direct judgment to be entered in conformity with the opinion heretofore filed.

May 18, 1883.

J. W. SIMONTON, *P. J.*

(Endorsement:) 36. Aug. term, 1886. Commonwealth of Pennsylvania *vs.* Pullman's Palace Car Company. Defendant's exceptions to the decision of the court and opinion on exceptions. Filed March 21, 1883. (Writ of error from supreme court of Pennsylvania.)

96 THE COMMONWEALTH OF PENNSYLVANIA, *Middle District of Pennsylvania,* } *sct:*

To the justices of the court of common pleas for the county of Dauphin, Greeting:

Because in the record and process and in rendering the judgment in a certain plaint which was in our said court, before the judges of the same court, by our writ, between the Pullman Palace Car Company, plaintiff in error, and the Commonwealth of Pennsylvania, defendant in error, as it is said, manifest error hath intervened, to the great damage of the said plaintiff in error, as by complaint of the same plaintiff in error we have received information, we, — willing that if any error be therein it should be corrected and that speedy justice be done to the parties in this part, do command you that if judgment, as it is said, be rendered in the said plea, then the record and process and all things touching the same, under your seals, distinctly and openly, you have before the justices of our supreme court of Pennsylvania, at a supreme court to be held at Harrisburg, in and for the middle district of said Commonwealth, on the 21st Monday following 1 Mon. of Jan., 1883, being the 1st Monday of the term, and this writ, that, the record and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the Honorable Ulysses Mercer, doctor of laws, chief justice of our supreme court, at Harrisburg, the 23rd day of May, in the year of our Lord one thousand eight hundred and eighty-three, and of the Commonwealth the one hundred and seventh.

[Seal of Supreme Court of Pennsylvania, Middle District.]

WILLIAM PEARSON,
Prothonotary.

97 (Endorsement:) No. 35. May term, 1883. Supreme court, middle district. Pullman Palace Car Company, plaintiff in error, *v.* Commonwealth of Pennsylvania, defendant in error. Writ of error to the court of common pleas for the county of Dauphin. No. 36. Aug. term, 1881. Returnable the 21 Monday following 1 Monday of Jan., 1883. Rule on the defendant to appear and plead on the return day of the writ. N. B.—12 days' notice to the parties or counsel below is necessary to compel an appearance. Filed in Dauphin county C. P. May 24, 1883. Filed in supreme court May 31, 1884.

I certify that recognizance in error in $100 with A. C. Stamm or bail has been filed in the supreme court.

WILLIAM PEARSON,
Prothonotary.

MAY 24, 1883.

Service of the within writ accepted.

ROBERT SNODGRASS,
Dep'ty Att'y Gen'l.

The record and process and all things touching the same, so
98 full and entire as before us they remain, to the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the middle district, we certify and send as within we are commanded.

J. W. SIMONTON, *P. J.* [L. S.]

In the Supreme Court of Pennsylvania in and for the Middle District of said Court.

At a supreme court of the State of Pennsylvania sitting in and for the middle district of said court, at the city of Harrisburg, Pennsylvania, on the 21st Monday following the 1st Monday of January, A. D. 1883—present, the Honorable George Sharswood, Ulysses Mercur, Isaac G. Gordon, Edward M. Paxson, John Trunkey, James P. Sterret, and Henry Green, justices, and William Pearson, prothonotary of the said supreme court of Pennsylvania in and for the said middle district to May term, 1883, No. 35, it is contained as follows, to wit:

99 *Writ of Error to the Court of Common Pleas of Dauphin County.*

No. 36. Aug. 7, 1881.

PULLMAN PALACE CAR COMPANY, Defendant below,
v.
COMMONWEALTH OF PENNSYLVANIA, Plaintiff below, } 35.

(Docket entries.)

Olmsted.

1883, May 23.—*Præc.*, aff., & recog. filed; *eo die*, exit writ of error r't'ble 21 Mon. foll. 1 Mon. of Jan., 1883.

1883, May 28.—Continued.

1884, May 31.—Record returned and filed.

" June 6.—Argued.

" " 2.—Assignments of error filed.

" Oct. 6.—Judgment affirmed *per curiam*.

" Dec. 5.—Writ of error from the Supreme Court of the United States received and filed.

Eo die.—Petition for *allocatur* of writ from said court. *Allocatur* of said writ by Hon. Joseph P. Bradley, justice of said court; citation
100 from said Hon. Joseph P. Bradley and affidavit of service thereof on the Governor and attorney general of the Commonwealth of Pennsylvania, and writ of error bond in the sum of three thousand dollars received and filed; certified from the record.

[Seal of the Supreme Court of Pennsylvania, Middle District, 1776.]

WILLIAM PEARSON,
Prothonotary.

(Endorsement on *præcipe* affidavit, and recognizance:) No. 35. May term, 1883. Supreme court of Penna., middle district. Pull-

man Palace Car Co., plaintiff in error, *v.* Commonwealth of Pennsylvania, defendant in error. Dauphin county. *Præcipe*, affidavit, and recognizance for writ of error. Filed May 23, 1883. W. E. Olmsted, attorney for pl'ff in error.

(*Præcipe.*)

101 In the Supreme Court of Pennsylvania for the Middle District.

PULLMAN'S PALACE CAR CO., Defendant below, Plaintiff in Error.

vs.

COMMONWEALTH OF PENNSYLVANIA, Plaintiff below, Defendant in Error.

Issue writ of error to the court of common pleas of Dauphin county to remove the record and proceedings in a certain action of debt depending therein to No. 36 of August term, 1881. Returnable to May term, 1883.

M. E. OLMSTED,
Attorney for Plaintiff in Error.

To William Pearson, proth'y supreme court of Pa., middle district.

(*Affidavit.*)

DAUPHIN COUNTY, *ss:*

M. E. Olmsted, attorney for the above-named plaintiff in error, being duly sworn according to law, deposes and says that the writ of error in this case is not intended for delay.

M. E. OLMSTED.

Sworn & subscribed before me this 23 day of May, 1883.

WILLIAM PEARSON,
Prothonotary.

102 (*Recognizance.*)

DAUPHIN COUNTY, *ss:*

In the Supreme Court of Penna. for the Middle District.

PULLMAN'S PALACE CAR CO., Plaintiff in Error,
vs.
COMMONWEALTH OF PENNSYLVANIA, Defendant in Error. } No. 36.

Surwrit of error to the court of common pleas for the county of Dauphin, of August term, 1881.

We, the Pullman Palace Car Co. and A. C. Stamm, severally acknowledge to owe the above-named defendant in error the sum of one hundred dollars, upon condition that the above-named plaintiff in error prosecute its writ of error with effect; and if judgment be affirmed, or the writ of error be discontinued or non-prossed, to pay

the cost adjudged accruing upon such judgment and all other damages and costs that may be awarded upon such writ of error.

PULLMAN'S PALACE CAR CO.
By its attorney, M. E. OLMSTED.
A. C. STAMM.

Taken and acknowledged this 23rd day of May, A. D. 1883.
WILLIAM PEARSON,
Prothonotary.

103 (*Assignments of Error.*)

Supreme Court of Pennsylvania, Middle District. May Term, 1883.

PULLMAN'S PALACE CAR COMPANY, Plaintiff in Error (Defendant below),
v.
COMMONWEALTH OF PENNSYLVANIA, Defendant in Error (Plaintiff below). } 35.

Assignments of error.

I. The court erred in overruling defendant's sixth exception, which exception was as follows:

"Sixth. The court erred in its first conclusion of law, as follows:

"'1. The defendant is liable to tax upon the proportion of its capital stock invested in this State, or represented by the coaches and cars owned and used by it here.'"

II. The court erred in overruling defendant's seventh exception, which exception was as follows:

"Seventh. The court erred in its second conclusion of law, as follows:

"'2. The fact that some of said coaches and cars have been leased to the Central Transportation Company for ninety-nine years
104 does not affect such liability.'"

III. The court erred in overruling defendant's eight- exception, which exception was as follows:

"Eight-. The court erred in its third conclusion of law, as follows:

"'3. The law under which said taxes are imposed and said liability accrues are not in conflict with the 8th section of article one of the Constitution of the United States.'"

IV. The court erred in overruling defendant's ninth exception, which exception was as follows:

"Ninth. The court erred in not finding as a conclusion of law that Pullman's Palace Car Company is not liable for taxation upon its own capital stock by reason of the cars leased from the Central Transportation Company."

V. The court erred in overruling defendant's tenth exception, which exception was as follows:

"Tenth. The court erred in not finding as a conclusion of
105 law that the defendant, being a corporation of the State of Illinois, is not taxable upon any proportion of its capital

stock by reason of its permitting its cars to be transported into, out of, or through this State, so long as they do not obtain *situs* here."

VI. The court erred in overruling defendant's eleventh exception, which exception was follows:

"Eleventh. The court erred in directing judgment to be entered in favor of the Commonwealth for $21,109,63."

VII. The court erred in overruling defendant's twelfth exception, which exception was as follows:

"Twelfth. The court erred in not directing judgment to be entered in favor of defendant."

M. E. OLMSTED,
Attorney for Plaintiff in Error.

(Endorsement:) 35. May term, 1883. Pullman's Palace Car Company *v.* Commonwealth of Pennsylvania. Assignments of
106 error. Filed June 2, 1884.

(*Opinion of Supreme Court.*)

PULLMAN PALACE CAR COMPANY *v.* COMMONWEALTH.

Error to the — Common Pleas of the County of Dauphin.

Per CURIAM:

We think it very clear that the plaintiff in error is engaged in carrying on such a business within this Commonwealth as to subject it to the statutes imposing taxation. While the tax on the capital stock of a company "is a tax on its property and assets," yet the capital stock of a company and its property and assets are not identical. The coaches of the company are its property. They are operated within this State. They are daily passing from one end of the State to the other. They are used in performing the functions
for which the corporation was created. The fact that they
107 also are operated in other States cannot wholly exempt them
from taxation here. It reduces the value of property in this State justly subject to taxation here. This was recognized in the court below, and we think the preference was fixed according to a just and equitable rule.

Judgment affirmed.

Endorsement: No. 35. May term, 1883. Pullman's Palace Car Company *v.* Commonwealth. Error to — common pleas of the county of Dauphin. Judgment affirmed *per curiam.* Filed Oct. 6, '84.

And now, here, on this day, to wit, December 5th, A. D. 1884, the said The Pullman Palace Car Company produced to the supreme court of Pennsylvania here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid of the judgment
108 aforesaid, so as aforesaid rendered, with all things touching the same, to be transmitted to the Supreme Court of the United States to be held at the city of Washington on the second Monday of October next, which writ of error is hereunto annexed.

In pursuance whereof and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court of the United States accordingly.

(*Copy of Petition for Allocatur.*)

To the Honorable Joseph P. Bradley, justice of the Supreme Court of the United States:

The petition of Pullman's Palace Car Company respectfully showeth—

109 That your petitioner is a corporation created by and existing under the laws of the State of Illinois, having its principal office in the city of Chicago, in said State.

That it owns and leases coaches known as parlor and sleeping coaches, which, by agreement with various railroad companies, it permits to be used upon their lines.

That some of the said sleeping and parlor coaches are, and were during the year- 1870 to 1880, attached to trains of cars running into, out of, or through the State of Pennsylvania, and used for the transportation of passengers of said railroad companies, travelling to or from points in other States, the railroad company receiving the usual fare for the transportation of passengers in said cars, and Pullman's Palace Car Company receiving pay for sleeping berths, &c., in said cars.

110 That the auditor general of Pennsylvania settled an account against your petitioner for a tax upon its capital stock, claimed to be due to the said State for the years above mentioned.

That your petitioner appealed from the action of the auditor general to the court of common pleas of Dauphin county, to No. 36, August term, 1881, as provided by law, and in the first specification of objections contained in its appeal averred that—

"Pullman's Palace Car Company is not a corporation of the State of Pennsylvania, but is a corporation of the State of Illinois; no part of its capital stock is, or was during any of the years for which tax was charged, invested in the State of Pennsylvania."

And in the thirteenth specification of objections contained in its appeal averred that—

"So far as they apply to Pullman's Palace Car Company,

111 the laws of Pennsylvania imposing taxes for State purposes are void, because in conflict with section 8 of article I of the Constitution of the United States."

That the cause came on to be heard in the court of common pleas of Dauphin county, and that in the opinion filed by the president of said court it was stated as a conclusion of law that "the laws under which said taxes are imposed and said liability accrues are not in conflict with the eight- section of article one of the Constitution of the United States," and judgment was rendered against your petitioner for the sum of $21,109.63.

That among the exceptions filed by your petitioner to the opinion of the court were the following:

"The court erred in its third conclusion of law as follows: 'The laws under which said taxes are imposed and said liability accrues
112 are not in conflict with the eighth section of article I of the Constitution of the United States.'

"The court erred in not finding as a conclusion of law that the defendant, being a corporation of the State of Illinois, was not taxable upon any proportion of its capital stock by reason of its permitting its cars to be transported into, out of, or through this State, so long as they do not obtain a *situs* here."

That the said exceptions of your petitioner were overruled by the court of common pleas of Dauphin county.

That by writ of error the said cause was, by your petitioner, removed to the supreme court of Pennsylvania to No. 35, May term, 1883, of the middle district of said court.

That in the supreme court of Pennsylvania your petitioner assigned as error the overruling by the court of common pleas of Dauphin county of the exceptions above stated.

113 That the supreme court of Pennsylvania, upon the 6th day of October, A. D., 1884, affirmed the judgment of the court of common pleas of Dauphin county.

That the supreme court of Pennsylvania, in which said cause was heard and decided, is the highest court of record and the court of last resort in the Commonwealth of Pennsylvania.

That the judgment of the said court is final.

That the judgment of the said court, as already shown, necessarily involved the decision of a Federal question, and that said decision is in favor of the State law and against the immunity claimed by your petitioner under the Constitution of the United States.

Wherefore your petitioner (herewith presenting a bond with security for approval) prays that a writ of error may be allowed to issue to the said supreme court of Pennsylvania to bring up the record to the Supreme Court of the United States for correc-
114 tion in that which violates the Constitution and laws thereof, and that the citation to the defendant may accompany the same. And it will ever pray, &c.

PULLMAN'S PALACE CAR CO.,
By its attorneys, M. E. OLMSTED,
O. A. LOCHRANE,
Per O.

(*Allocatur.*)

Writ of error is allowed pursuant to the foregoing petition.
November 12th, 1884.

JOSEPH P. BRADLEY,
Associate Justice Sup. Court U. S.

(Endorsement:) No. 35. May term, 1883. Pullman's Palace Car Company *v.* Commonwealth of Pennsylvania. Petition for *allocatur.* Filed in S. C. of Pa., Dec. 5, 1884.

(*Writ of Error Bond.*)

115 Supreme Court of the United States.

PULLMAN'S PALACE CAR COMPANY, Plaintiff in Error,
v.
COMMONWEALTH OF PENNSYLVANIA, Defendant in Error. } No. 35.

In error to the supreme court of Pennsylvania, middle district. May T., 1883.

Know all men by these presents that we, Pullman's Palace Car Company, a corporation of the State of Illinois, and George M. Pullman and John Crerar, of the State of Illinois, county of Cook, sureties, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of thirty thousand dollars ($30,000), lawful money of the United States of America, to be paid to the said Commonwealth of Pennsylvania, or her certain attorney or assigns; to which payment, well and truly to be made, we do bind ourselves, and each of us, our heirs, executors, administrators, and successors, firmly by these presents.

Sealed with our seals and dated the — day of October, A. D. 1884.

116 Whereas lately at a court of common pleas in and for the county of Dauphin judgment was entered against Pullman's Palace Car Company at the suit of the Commonwealth of Pennsylvania, of August term, 1881, No. 36, which judgment was afterwards affirmed by the supreme court of the State of Pennsylvania, in a certain plea and suit in said court, of May term, 1883, No. 35, and the said Pullman's Palace Car Company have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of Pennsylvania:

Now, the condition of this obligation is such that if the above-named Pullman's Palace Car Company, plaintiff in error, shall prosecute its writ of error with effect and answer all damages and costs if it shall fail to make good its plea, then this obligation to be void; otherwise, to remain in full force and virtue.

[Seal of Pullman's Palace Car Co.]

117 PULLMAN'S PALACE CAR COMPANY,
By GEORGE M. PULLMAN, *President.*
JOHN CRERAR. [SEAL.]
GEORGE M. PULLMAN. [SEAL.]

Attest:
A. S. WEINSHEIMER, *Secretary.*

Signed, sealed, and delivered in the presence of—

——— ———.

(*Approval.*)

This bond is approved Nov. 12, 1884.

JOSEPH P. BRADLEY,
Associate Justice Sup. Court of U. S.

Endorsement: No. 35. May term, 1883. Pullman's Palace Car Company *v.* Commonwealth of Pennsylvania. Bond. Filed in S. C. of Pa. Dec. 5, 1884.

(*Certificate.*)

STATE OF PENNSYLVANIA, *City of Harrisburg:*

In testimony that the foregoing, contained on pages one
118 to one hundred and eighteen, inclusive, is a full, true, and correct copy of the record and proceedings of the supreme court of Pennsylvania, the highest court of law and equity in the State of Pennsylvania, in the case lately depending therein, to No. 35 of the May term of 1883, in the middle district, wherein the Pullman Palace Car Company was plaintiff in error and the Commonwealth of Pennsylvania was defendant in error, I have hereunto subscribed my name and affixed the seal of the said supreme court at Harrisburg this seventh day of March, A. D. 1885.

[Seal of the Supreme Court of Pennsylvania, Middle District, 1776.]

WILLIAM PEARSON,
Prothonotary of the Supreme Court of Pa., Middle District.

119 *Assignments of Errors.*

In the Supreme Court of the United States. October Term, 1885.

PULLMAN'S PALACE CAR COMPANY
vs.
COMMONWEALTH OF PENNSYLVANIA. } No. —.

Surwrit of error by Pullman's Palace Car Company to the supreme court of Pennsylvania.

1. The court erred in not sustaining the company's exception to the decision of the court, below, viz:

"The court erred in not finding as a conclusion of law that defendant, being a corporation of the State of Illinois, is not taxable upon any proportion of its capital stock by reason of its permitting its cars to be transported into, out of, or through this State (Pennsylvania) so long as they do not obtain a *situs* here."

2. The learned court erred in not sustaining the company's exceptions to the following ruling of the court below:

"The laws under which said taxes are imposed and said liability
120 accrued are not in conflict with the eighth section of article I of the Constitution of the United States."

3. The learned court erred in not holding that the laws of the State of Pennsylvania, so far as they impose taxes upon the cars or capital stock representing the cars of Pullman's Palace Car Company, a corporation of the State of Illinois, said cars being only temporarily in Pennsylvania while *in transit* to or from other States, having no *situs* here and not become incorporated with the property of the Commonwealth, are void, because in violation of a necessary implication of the Constitution of the United States that each State

shall have jurisdiction only over property within its territorial limits.

4. The learned court erred in not holding that, as the Pullman cars, while in Pennsylvania, are in course of transportation by railroad companies to or from other States, any attempt to tax the cars themselves or the capital stock representing the cars, or to tax the company in any way because they are transported into, out
121 of, or through the Commonwealth of Pennsylvania, is an interference with commerce between States, and as such within the prohibition of the Federal Constitution.

5. The learned court erred in affirming the judgment of the court of common pleas of Dauphin county in favor of the Commonwealth of Pennsylvania and against Pullman's Palace Car Company.

6. The learned court erred in not reversing the judgment of the court of common pleas of Dauphin county.

To the honorable the judges of the Supreme Court of the United States of America:

The petitioner prays for a reversal of the judgment entered against it in the supreme court of Pennsylvania for the reasons assigned above.

PULLMAN'S PALACE CAR COMPANY,
By its attorney, MARTIN E. OLMSTED.

[Endorsed:] 35. Pullman's Palace Car Co. *vs.* Commonwealth of Pennsylvania. Assignment of errors and prayer for reversal. Olmsted.

Endorsed on cover: Pennsylvania supreme court. No. 588. Pullman's Palace Car Company, plaintiff in error, *vs.* The Commonwealth of Pennsylvania. Filed September 12, 1885.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A.D. 1888.

No. 31.—ERROR TO SUPREME COURT OF PENNSYLVANIA.

PULLMAN'S PALACE CAR COMPANY,
Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA,
Defendant in Error.

TAX ON CAPITAL STOCK.

ARGUMENT FOR PLAINTIFF IN ERROR.

EDWARD S. ISHAM,
WILLIAM BURRY,
Of Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A.D. 1888.

No. 31.—ERROR TO SUPREME COURT OF PENNSYLVANIA.

PULLMAN'S PALACE CAR COMPANY,
Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA,
Defendant in Error.

TAX ON CAPITAL STOCK.

ARGUMENT FOR PLAINTIFF IN ERROR.

The following facts appear in the printed record, found chiefly on pages 53 to 56, in the opinion of the Court of Common Pleas, and especially in the defendant's third exception to that opinion on page 56, folio 92, and in the supplemental opinion of the Court relating to that exception, found on page 56, folio 94.

The plaintiff in error, the Pullman Company, is a corporation of Illinois, having its headquarters in Chicago. It is engaged in the transportation of railway passengers into and out of and through, among other States, the State of Pennsylvania. "The cars used in the State of Pennsylvania were also used in other States, their use in Pennsylvania being confined to passengers to or from points in other States." (Folios 92 and 94.) Its business in the State of Pennsylvania was, therefore, entirely of that Inter-State character. On these facts the plaintiff in error claimed below "that no part of its capital stock was invested in" Pennsylvania.

On account, however, of the business thus engaged in, and of the presence in the State for this purpose of the railway cars which are the property of the plaintiff in error and employed in this business, the State of Pennsylvania assumed to impose a tax upon the capital stock of the Illinois corporation, and accordingly the Auditor-General and State Treasurer, in February, 1881, assumed that a portion of the capital of the Pullman Company should be deemed to have a local investment in the State of Pennsylvania, and estimated such proportion of the capital stock to be constructively there as was represented by the ~~value of the average~~ number of ~~cars required~~ to do the business within the State lines, without reference to the fact that any particular car was only temporarily there in the conduct of this Inter-State business. On this estimated amount of capital stock a tax was levied for a period of ten years, from 1870 to 1880, and judgment was rendered in the Court of Common Pleas, and affirmed in the Supreme Court of Pennsylvania, for the amount, exclusive of penalties and interest, of $21,109.63. The statutes of Pennsylvania under which the officers of the State assumed to act were, for the years 1870 to 1874, the fifth section of the Act of 1868; for the years 1875, 1876 and 1877, the fourth section of the Act of 1874; from 1878 to 1880, the Acts of 1877 and 1879. The following are the material parts of the statues referred to:

ACT OF 1868, ENTITLED "AN ACT TO REVISE, AMEND AND CONSOLIDATE THE SEVERAL LAWS TAXING CORPORATIONS, BROKERS AND BANKERS."

"SECTION 5. That the capital stock of all companies whatever, incorporated by or under any law of this commonwealth, or incorporated by any other State, and lawfully doing business in this commonwealth, or that may be hereafter incorporated, except banks and savings institutions and foreign insurance companies licensed in pursuance of the general acts in relation thereto, shall be subject to and pay a tax into the treasury of the commonwealth, annually, at the rate of one-half mill for each one per cent. of dividend made or declared by such company,

and in case of no dividend being made or declared by such company, then three mills upon a valuation of the capital stock of the same, made in accordance with the provisions of the second section of this act: *Provided*, That companies liable to tax on dividends in addition to tax on capital stock, prior to the act approved April twelfth, one thousand eight hundred and fifty-nine, entitled "An Act to equalize taxation upon corporations," shall from the said date be exempt from any tax on dividends: *Provided further*, That building associations, plank road or turnpike companies, shall not be liable for any tax to the commonwealth when such companies make or declare no dividends."

ACT OF 1874, ENTITLED "AN ACT FOR THE TAXATION OF CORPORATIONS."

"SECTION 4. That every railroad company, canal company, steamboat company, slack-water navigation company, transportation company, street passenger railway company, and every other company now or hereafter incorporated by or under any law of this commonwealth, or now or hereafter incorporated by any other State, and doing business in this commonwealth, and owning, operating or leasing to or from another corporation or company, any railroad, canal, slackwater navigation or street passenger railway, or device for the transportation of freight or passengers, or in any way engaged in the transportation of freight or passengers, shall be subject to and pay a tax into the treasury of the commonwealth, annually, at the rate of nine-tenths of one mill upon its capital stock for each one per cent. of dividend made or declared by such company, and in case of no dividend being declared or made by such company, upon either its common or preferred stock, then six mills upon a true valuation of the capital stock of the same, upon which no dividend has been made or declared, made in accordance with the provisions of the third section of this act."

ACT OF 1877, ENTITLED "AN ACT TO EQUALIZE THE TAXATION OF CORPORATIONS AND COMPANIES."

"SECTION 3. That every company or association whatever now or hereafter incorporated by or under any law of this commonwealth, or now or hereafter incorporated by any other State or country, and doing business in this commonwealth, except building associations, banks, savings

institutions and foreign insurance companies, shall be subject to and pay into the treasury of the commonwealth, annually, a tax to be computed as follows, namely: If the dividend or dividends made or declared by such company or association, during any year ending with the first Monday in November, amount to six or more than six per centum upon the par value of its capital stock, then the tax to be at the rate of one-half mill upon the capital stock for each one per centum of dividend so made or declared; if no dividend be made or declared, or if the dividends made or declared do not amount to six per centum upon the par value of said capital stock, then the tax to be at the rate of three mills upon each dollar of a valuation of the said capital stock, made in accordance with the provisions of the first section of this act; and in case any such company or association shall have more than one kind of capital stock, as for instance, common and preferred stocks, and upon one of said stocks a dividend or dividends amounting to six or more than six per centum upon the par value thereof has been made or declared, and upon the other no dividend has been made or declared or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-half mill for each one per centum of dividend made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto tax shall be charged at the rate of three mills upon each dollar of a valuation, made also in accordance with the provisions of the first section of this act, of the capital stock upon which no dividend was made or declared or upon the par value of which the dividend or dividends made or declared did not amount to six per centum."

ACT OF JUNE 7TH, 1879.

"SEC. 4. Every company or association whatever, now or hereafter incorporated by or under any law of this commonwealth, or now or hereafter incorporated by any other State or territory of the United States, or foreign government, and doing business in this commonwealth, or having capital employed in this commonwealth in the name of any other company or corporation, association or associations, person or persons, or in any other manner, except foreign insurance companies, banks and saving institutions, shall be subject to and pay into the treasury

of the commonwealth, annually, a tax to be computed as follows, namely: If the dividend or dividends made or declared by such company or association as aforesaid, during any year ending with the first Monday of November, amount to six or more than six per centum upon the par value of its capital stock, then the tax to be at the rate of one-half mill upon the capital stock for each one per centum of dividend so made or declared; if no dividend be made or declared, or if the dividend or dividends made or declared do not amount to six per centum upon the par value of said capital stock, then the tax to be at the rate of three mills upon each dollar of a valuation of the said capital stock made in accordance with the provisions of the second section of this act; and in case any such company or association shall have more than one kind of capital stock, as for instance, common and preferred stock, and upon one of said stocks a dividend or dividends amounting to six or more than six per centum upon the par value thereof has been made or declared, and upon the other no dividend has been made or declared or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-half mill for each one per centum of dividend made or declared upon the capital stock, upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto tax shall be charged at the rate of three mills upon each dollar of a valuation, made also in accordance with the provisions of the second section of this act, of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum; and it shall be the duty of the treasurer or other officer having charge of any company or association upon which a tax is imposed by this section of this act, to transmit the amount of said tax to the treasury of the commonwealth within fifteen days from the 31st day of December, in each and every year; *Provided*, That whenever such corporation or company shall make any profit and add the same to its sinking fund, without a division thereof amongst its stockholders, the amount of the profit thus added to its sinking fund shall be included in the report required by the second section of this act to be made, and for the purpose of this act, the same shall be treated as having been divided amongst the stockholders, and shall subject the capital stock to

taxation as a dividend; *Provided, however*, That said money or any part thereof shall be expressly set apart for the payment of debts."

Upon the record of this cause we assign the following errors:

FIRST.—The Court erred in holding that any part of the capital stock of the Pullman Company was subject to taxation by the State of Pennsylvania, by reason of its employment of its cars in Inter-State transportation of passengers, and in the course of that employment running them into, out of or through the State of Pennsylvania.

SECOND.—The taxation of the capital stock of the Pullman Company, as shown in the record, is in violation of the third clause of the eighth section of article one of the Constitution of the United States, which vests in Congress "the power to regulate commerce with foreign nations and among the several States."

The State of Pennsylvania had no jurisdiction over any subject matter of taxation which could support the tax imposed upon the capital stock of the Pullman Company. A tax upon the capital stock of the company is a tax upon its property and assets.

Commonwealth v. *Standard Oil Co.*, 101 Pa. St., 145.

Gloucester Ferry Co. v. *Pennsylvania*, 114 U. S., 209.

To exercise the power of taxation, however, the legitimate subject matter of taxation—persons, property or business—must be found within the jurisdiction of the State.

State Tax on Foreign-Held Bonds, 15 Wall., 319.

"Where there is jurisdiction neither as to person or property, the imposition of the tax would be *ultra vires* and void. * * * Jurisdiction is as necessary to valid legislative as to valid judicial action."

St. Louis v. *Ferry Company*, 11 Wall., 423.

The Pullman Company being a corporation, not of Pennsylvania, but of Illinois, its domicile is there, and that domicile draws to itself the possession and *situs* and liability to taxation of the property. We are drawn into no controversy with the doctrine that property of a non-resident corporation may become so commingled with and incorporated into the mass of property in a State as to be taken to have acquired a constructive *situs* there and so become a proper subject of local taxation; for we say that the property of a foreign transportation company employed by it in Inter-State transportation can *never by that use* acquire that constructive *situs* or qualify its original foreign *situs*. The nature of the business of this plaintiff in error, and the relation of its cars engaged in the precise employment shown in this record were before this Court in *Pickard* v. *Pullman Car Co.*, 117 U. S., 34. In that case the whole subject was, as this Court has said in *Wabash, St. L. & Pac. R'y Co.* v. Ills., 118 U. S., 557, "very fully re-examined." The Court held expressly: *first*, that the foreign corporation *had no domicile for purposes of taxation* in the State where the tax was imposed; *second*, that the cars which it ran and used upon the railroads of that State in Inter-State transportation *had no situs there for the purposes of taxation*, and did not by that employment become a part of the mass of property within the jurisdiction of the State for purposes

of taxation. As a *vehicle* of Inter-State transportation the car was not taxable, and such use of the car by a foreign corporation gave it no *situs* in the State for property taxation. Where property is not otherwise within the jurisdiction of the State for purposes of taxation it can never be brought within such jurisdiction by employment within the State in carrying on Inter-State transportation. The State of Pennsylvania, therefore, had no jurisdiction over the property and assets of the plaintiff in error for purposes of taxation, and the tax upon its capital stock is a tax upon property and assets over which it had no jurisdiction.

A tax upon the cars of the plaintiff in error, engaged in this employment, is directly a regulation of Inter-State commerce within the operation of the commerce clause of the Federal Constitution. A tax upon the capital stock is a tax upon the property. The property is within the territory of the State for the purpose of employment in Inter-State transportation. A tax upon that property is a tax directly upon the instrumentalities of that commerce, and the taxation of such property is precluded by the Federal Constitution. Such taxation is regulation of commerce, for taxation is regulation. "A tax is one of the forms of regulation. It is one of the principal forms."

Phil. & So. Mail S. S. Co. v. *Pennyslvania*, 122 U. S., 326.
Pickard v. *Pullman Car Co.*, 117 U. S., 34.
Gloucester Ferry Co. v. *Pennsylvania*, 114 U. S., 196.
Robbins v. *Shelby Taxing District*, 120 U. S., 489.
Hayes v. *Pac. Mail S. S. Co.*, 17 How., 596.
Central R. R. Co. v. *State Board of Assessors*, 49 N. J. L., 1, 20.
Fargo v. *Michigan*, 121 U. S., 230.

A tax imposed upon the capital stock, upon the property

and assets, of a foreign corporation engaged in the Inter-State transportation within a State, is in effect a condition imposed upon its right to do business within that State. As a rule, perhaps, States may prescribe the conditions upon which foreign corporations may do business within their limits, but in *Phila. Fire Association* v. *New York*, 119 U. S., 110, the Court carefully excluded any implication that that power could extend "to an interference with the transaction of commerce between that State and other States by a corporation created by one of such other States."

Robbins v. *Shelby Taxing District*, 120 U. S., 489.

A transportation company, or a corporation engaged in the business of Inter-State transportation cannot be subjected by any State to conditions upon its right to carry on such Inter-State intercourse within its limits.

Fargo v. *Michigan*, 121 U. S., 230.

The tax upon capital stock, therefore, as shown in this record, is in contravention of the commerce clause of the Federal Constitution and cannot be supported.

EDWARD S. ISHAM,
WILLIAM BURRY,
Of Counsel for Plaintiff in Error.

Office Supreme Court
FILED
OCT 18 1888
JAMES H. McKENNEY
CLERK

No. 31, OCTOBER TERM, 1888.

In the Supreme Court of the United States.

Pullman's Palace Car Company,
Plaintiff in Error,

vs.

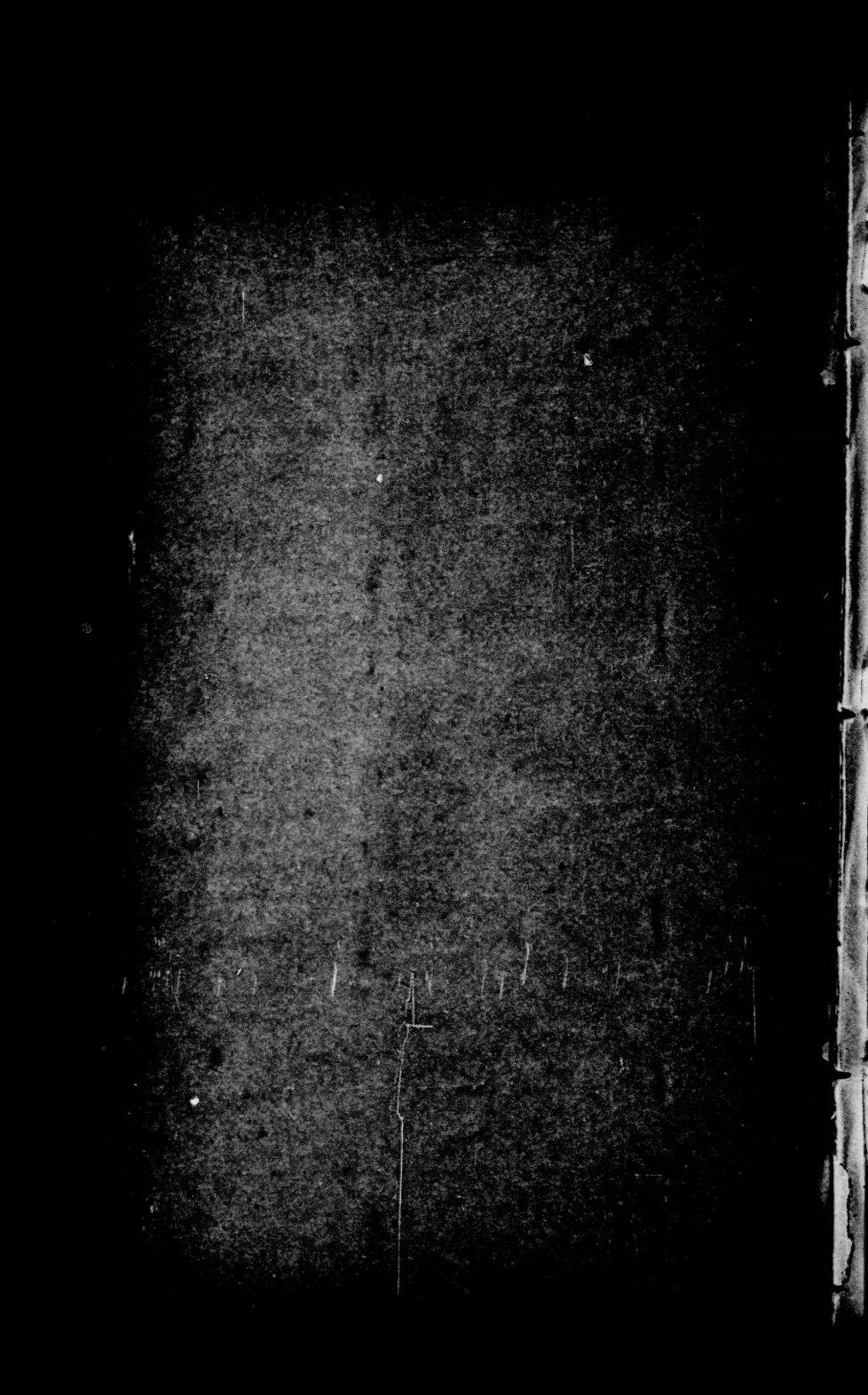
The Commonwealth of Pennsylvania,
Defendant in Error,

In Error to the Supreme Court of Pennsylvania.

TAX ON CAPITAL STOCK.

BRIEF OF ARGUMENT ON BEHALF OF PLAINTIFF IN ERROR.

M. E. OLMSTED,
Of Counsel for Plaintiff in Error.



Supreme Court of the United States

No. 31, OCTOBER TERM, 1888.

Error to Supreme Court of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY,
Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA,
Defendant in Error.

TAX ON CAPITAL STOCK.

ARGUMENT FOR PLAINTIFF IN ERROR.

This suit originated in the Court of Common Pleas of Dauphin County. By agreement, under the Pennsylvania act of 1874, (Record, p. 15,) a jury trial was dispensed with, and the facts as well as the law submitted for the determination of the Court. The facts as found by the Court under this law are conclusive. *Jamison* vs. *Collins, 83 Pa. St., 359; Lee* vs. *Keys, 88 Pa. St., 175.*

As found by the Dauphin County Court, the facts necessary for consideration here are as follow:

"Defendant is a corporation of the State of Illinois, having its principal office in Chicago. Its business was during all the time for which tax is charged to furnish sleeping coaches and parlor and dining room cars to the various railroad companies with which it contracted on the following terms: The defendant furnished the coaches and cars, and the railroad companies attached and made them part of their trains, no charge being made by either party against the other. The railroad companies collected the usual fare from passengers who traveled in the

coaches and cars, and the defendant collected a separate charge for the use of the seats, sleeping berths, and other conveniences. Business has been carried on continuously by defendant in this way in Pennsylvania since February 17, 1870, and it has about one hundred coaches and cars engaged in this way in the State during that time." (Record, p. 53, folio 85.)

"The cars used in this State have, during all the time for which tax is charged, been running into, through and out of this State." (Record, p. 56, folio 94.)

The claim of the Commonwealth being for tax on Capital Stock for the years 1870 to 1880, inclusive, under the acts of 1868, 1874 and 1879, the Dauphin County Court, upon the facts above stated, held

"That the proportion of the Capital Stock of the defendant invested and used in Pennsylvania is taxable under these acts, and that the amount of the tax may be properly ascertained by taking as a basis the proportion which the number of miles operated by defendant in this State bears to the whole number of miles operated by it without regard to the question where any particular car or cars were used." (Record, p. 54, folio 88.)

This conclusion of law was sustained by the Supreme Court of the State.

The tax on capital stock, as imposed by the Pennsylvania statutes, is a tax on property. In *Commonwealth of Pennsylvania* vs. *Standard Oil Company of Ohio, 101 Pennsylvania, 119*, a similar tax was claimed under the same acts, and for the same years as that now claimed from Pullman's Palace Car Company. The Attorney General contended that the statutes did not impose a tax upon the property of the corporation, but upon the privilege of investing capital and doing business in that State. In other words, that it was a franchise tax, and, as such, might be applied to the entire capital stock of a foreign corporation doing business in Pennsylvania. The company contended that it was a tax on property, and as such applicable only to that proportion of its capital stock which represented taxable property in Pennsylvania. The Standard case involved the largest sum of money ever directly involved in one tax suit in Pennsylvania, and was pressed with all the power of the Commonwealth.

As it was a question of life or death for the company, it was opposed with like earnestness. The Court allowed unusual time and scope to its discussion by counsel, and the final decision in that case is understood to have settled conclusively the character of the tax on capital stock. Judge Simonton, of the Dauphin county court, ruled that it was a tax upon property, and, as such, assessable against the company "on so much of its capital stock * * * as represents the proportion which its property and assets owned in this State, during each of said years, respectively, bore to its whole property and assets." In affirming this judgment, Paxson, J., of the Supreme Court of Pennsylvania, said:

"It had been repeatedly decided, and is settled law, that the tax upon the Capital Stock of a company is a tax upon its property and assets. . . To the extent that it brought its property here it is taxable and no further. . . Regarding the words 'Capital Stock' in the act of Assembly as the equivalent of the property and assets of the corporation, we must construe them to mean so much of the Capital Stock measured by the property actually brought within the State by the Company in the transaction of its business."

Subsequently, in cases against the Pennsylvania Coal Company and National Transit Company, which were tried together, they being domestic corporations whose operations extended into other States, where part of their works were located, and one of them also holding United States bonds, the Supreme Court of Pennsylvania, in an opinion filed November 6, 1884, decided as follows:

"*Per Curiam:* These cases were argued together. It was correctly held by the learned judges in the Court below that so much of the tangible property of the corporations as was situate in other States, and there employed in their corporate business, was not taxable here. *Commonwealth* vs. *Standard Oil Company*, *12 W. N. C., 293.*

As a tax upon capital stock is a tax on the property and assets represented thereby, it follows that so much of their capital stock as is represented by investment in United States bonds is not taxable by the Commonwealth, inasmuch as the bonds themselves cannot be taxed thereby. *National Bank* vs. *Commonwealth*, *9 Wall., 353.* Judgment affirmed in each case."

This case is reported in a note to *Commonwealth* vs. *Montgomery Lead & Zinc Mining Company, 5 County Court Reports, 89.*

It thus conclusively appearing that the tax upon the capital stock of the corporation is a tax upon its property, it must follow that where there is no property within the taxing jurisdiction, there can be no recovery of such a tax. Pullman's Palace Car Company is a corporation of Illinois, having its principal office and place of business in Chicago. It is not pretended that it has received any franchises or privileges whatever from the State of Pennsylvania, that it maintains any office or transacts any business there, or has any property there, except in the one hundred cars running inter-State, as already shown.

The domicile of a corporation is the State of its origin. *Potter on Corporations, section 10.* And it cannot migrate to another sovereignty. *Bank of Augusta* vs. *Earle, 13 Peters, 586; Paul* vs. *Virginia, 8 Wallace, 168; St. Louis* vs. *Ferry Company, 11 Wallace, 423.* "A foreign corporation has no domicile here, and can have none." *Com.* vs. *Standard Oil Company, 101 Pennsylvania, 147.* It is incontrovertible that the domicile of Pullman's Palace Car Company is in Illinois, and not in Pennsylvania. If then its cars are personal property of such character as to be taxable at the domicile of the owner, it follows that the proper State for their taxation is Illinois, and not Pennsylvania. That such is the case there is abundant authority to show. Judge Cooley, in his work on taxation, on page 273, says:

"Where railroad property is taxed as other property is, the personalty should be assessed to the company at the place of its business office: that being the legal *situs* of its personalty."

In Burroughs on Taxation it is thus stated (p. 186):

"The question has been raised as to the rolling stock of a railroad, whether it is to be taxed as personal property, or is so attached to the road and connected with it as to partake of the nature of real estate. The weight of authority is that it is per-

sonal estate, to be taxed to the road where it has its domicile. * * * * A corporation is taxable for its personal property at its domicile, which is the State of its creation, and within that State, in the town where it has its principal office or place of business."

This proposition is sustained in *Orange & Alexander Railroad Company* vs. *City Council of Alexandria, 17 Grattan, 176; Pacific Railroad Company* vs. *Cass County, 53 Missouri, 17; Appeal Tax Court of Baltimore City* vs. *Western Maryland Railroad Company, 50 Maryland, 274; Philadelphia, Wilmington & Baltimore Railroad Company* vs. *Appeal Tax Court of Baltimore, 50 Maryland, 397; Sangamon* vs. *Morgan Railroad Company* vs. *County of Morgan, 14, Ill., 163; Welkey* vs. *City of Pekin, 19 Ill., 160; Ontario Bank* vs. *Bunnell, 10 Wend., 187; City of Sacramento* vs. *The California Stage Company, 12 Cal., 134.*

In *Baltimore & Ohio Railroad Company* vs. *Allen, 22 Federal Reporter, 376*, the B. & O. R. R. Co., a Maryland corporation, leased and operated sundry railroads in the State of Virginia. The Virginia roads owned no rolling stock whatever, the B. & O. furnishing all that was in use upon them. The question arose whether or not the cars owned by the Maryland corporation, but used upon the Virginia railroads, were taxable in Virginia. The United States Circuit Court of the Western District of Virginia decided this question in the negative, Paul, J., saying (p. 380):

"The opinion of the Court is that the *situs* or location of the rolling stock employed by the Baltimore and Ohio Railroad Company in operating the said railroads leased by it in the State of Virginia is in Baltimore city, State of Maryland; the same is not liable to assessment for taxes under the tax laws of Virginia."

This case is also reported in *17 Am. & Eng. R. R. Cases, 461.*

The principle is even more applicable to Pullman cars than to the ordinary rolling stock of a railroad company. Belonging to an independent corporation, they ply upon the lines

of other companies—upon various public highways for land transportation, much the same as vessels ply upon the various routes of water transportation vessels have always been held taxable only at their home port. *Hayes* vs. *Pacific Mail Steamship Company, 17 Howard, 596; St. Louis* vs. *The Ferry Company, 11 Wallace, 423; Morgan* vs. *Parham, 16 Wallace, 471*; *Gloucester Ferry Company* vs. *Pennsylvania, 114 U. S., 197.*

In *Appeal Tax Court of Baltimore City* vs. *The Pullman Palace Car Company, 50 Maryland, 452,* the only question before the Court was whether or not Pullman cars in use in that State, in precisely the same manner as the cars in question are used in Pennsylvania, were taxable there, and, as stated in the syllabus, the Court decided that—

"The palace and sleeping cars built and owned by the appellee, and leased or hired out by it to railroad companies, and which are used upon the various railroads which run in and through this State, are not subject to taxation under the act of 1876, ch. 260, as the appellee is a corporation created by the law of Illinois, and has its principal office or place of business in the city of Chicago."

In *Pullman Southern Car Company* vs. *Nolan, 22 Federal Reporter, 276,* the United States Circuit Court declared to be unconstitutional and invalid a statute of the State of Tennessee requiring a privilege tax of seventy-five dollars per annum for running or using the company's cars in that State. The plaintiff's cars were declared not subject to a privilege tax of seventy-five dollars per annum, imposed by the statute of Tennessee, Mr. Justice Matthews, who delivered the opinion of the Court, saying (p. 281):

"In the present case the Pullman Southern Car Company, a corporation of Kentucky, has no domicile in Tennessee, and is not personally subject to its jurisdiction for purposes of taxation, and the sleeping cars which it runs and uses upon the railroads of that State, in the transportation of passengers into and from it, from and to other States, have no *situs* within that State for the purposes of taxation. They are not brought into the State for the purpose of being employed in a business carried on within it, and do not become a part of the mass of property within the

jurisdiction of the State for purposes of taxation. They are in the State only as passing to and from it while in the act of transportation, performed by virtue of a right secured to the owners of them; not by the authority of the laws of Tennessee, but by virtue of a right secured by the exclusive jurisdiction of Congress under the Constitution."

In *Pickard* vs. *Pullman Southern Car Co., 117 U. S., 34,* the Supreme Court of the United States had before it for consideration a Tennessee statute imposing a tax of $50 per annum on every sleeping car or coach run over a railroad in that State, and not owned by the railroad company on whose line it was run or used. The Pullman Southern Car Company sustained precisely the same relation to the State of Tennessee that Pullman's Palace Car Company does to the State of Pennsylvania. The Pullman Southern Car Company was a corporation of the State of Missouri, just as the present defendant is a corporation of the State of Illinois. Its cars were running into, through and out of the State of Tennessee, just as those of Plaintiff in error are run into, through and out of the State of Pennsylvania. The company owning the cars was in that case, as in this, foreign to the State in which the cars were used. The facts were precisely the same as those here involved. Mr. Justice Blatchford, who delivered the opinion of this Court, said (p. 46):

"The car was equally a vehicle of transit, as if it had been a car owned by the railroad company, and the special conveniences or comforts furnished to the passenger had been furnished by the railroad company itself. As such vehicle of transit the car, so far as it was engaged in inter-State commerce, was not taxable by the State of Tennessee; because the plaintiff had no domicil in Tennessee, and was not subject to its jurisdiction for purposes of taxation; and the cars had no *situs* within the State for purposes of taxation; and the plaintiff carried on no business within the State, in the sense in which the carrying on of business in a State is taxable by way of license or privilege."

And again (p. 50):

"In the case at bar the plaintiff was not a Tennessee corporation, and had no domicil in Tennessee, and the sleeping cars in

question, as before said, had not any *situs* in Tennessee for the purposes of taxation."

But it may be urged that the tax involved in that controversy was not a tax upon property, but was a privilege or license tax. Be it so; it nevertheless became necessary for the purposes of that case to determine the *situs* of the property for whose use the privilege tax was demanded. That Court had already decided in *Wiggins Ferry Co.* vs. *East St. Louis, 107 U. S., 365*, that a license fee might be imposed in respect of boats which had their *situs*, and were therefore taxable property, within the State in which the license was sought to be exacted, and it became necessary for the Court to distinguish between that case and the Pickard case, which it did by showing, as aforesaid, that the corporation owning the cars had no domicil in Tennessee, and the cars had no *situs* there.

A similar decision was reached in *Tennessee* vs. *Pullman Southern Car Co., 117 U. S., 51.*

In *Pullman's Palace Car Co.* vs. *Twombly, 29 Federal Reporter, 658*, Brewer, J., comes to the remarkable conclusion not only that a vehicle of transportation may acquire a *situs* for purposes of taxation independent and irrespective of the domicile of the owner, but also that it may actually have a *situs* in several States at the same time. That conclusion is at war with the decisions of this Court. Indeed the learned judge admits, speaking of the opinions of Mr. Justice Matthews, in *Tennessee* vs. *Pullman's Southern Car Co., 22 Federal Reporter, 276*, and Mr. Justice Blatchford, in *Pickard* vs. *Pullman's Southern Car Co., 117 U. S., 34*, that in some "general expressions they go very strongly to sustain a different view." The "general expressions" must have been the same ones herein cited, but, as shown, those expressions had relation to the precise question before the Court. It was absolutely necessary for the determination of the questions then pending to determine the actual *situs* of the cars, and it was found to be at the domicile of the corporation owning them, and not elsewhere. This Court has jurisdiction of

this case independent of any question concerning the regulation of inter-State commerce.

Over and over again Federal and State courts have held that any attempt by legislative enactment to tax persons or property beyond the territorial limits of the taxing power is void. If asked what law makes it void? To what principle may the Federal courts appeal to declare it void? We answer: to the principle laid down in *McCullough* vs. *Maryland*, 4 *Wheat., 316*, that it is *a necessary implication of the Federal Constitution* that the power of taxation residing in the States shall be measured by the extent of sovereignty which the people of a single State possess and can confer on its government.

"In this," says Chief Justice Marshall, "we have an inteligible standard applicable to every case to which the power may be applied; we have a principle which is safe for the States and safe for the Union. We are relieved, as we ought to be, from clashing sovereignty, from interfering powers, from a repugnancy between a right in one Government to pull down what there is an acknowledged right in another to build up, from incompatibility of a right in one Government to destroy what there is a right in another to preserve."

And the learned justice shows that the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one Government the power to control the constitutional measures of another. He shows how the whole principle of our Government would be disastrously altered if such taxation were allowed. That case involved taxation by a State, of property of the United States, but the principle applied affects all attempted taxation by a State of property over which it has no jurisdiction.

The object of the Federal Government was, and is, to "insure domestic tranquillity" and "establish justice." If it has not the power to prevent one State from deriving its revenues from property belonging to the sovereignty and within the protection of another State, it is poorly adapted to fulfill the intention of its founders.

It is said in *Lane Co.* vs. *Oregon, 7 Wallace, 76,* that "in many of the articles of the Constitution, the necessary existence of the States, and *within their proper spheres* the independent authority of the States, is distinctly recognized." The *proper spheres* of the States are as distinctly recognized as their necessary existence, and that each State shall keep within its proper sphere is "a principle which so entirely pervades the Constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it without rending it into shreds." *McCullough* vs. *Maryland, supra.*

The State of Pennsylvania has no jurisdiction over this company or its property.

Said Chief Justice Marshall, in the case last cited:

"That all subjects over which the sovereign power of a State extends are the object of taxation, but *those over which it does not extend are upon the soundest principles, exempt from taxation.* This proposition may almost be pronounced self-evident."

In many cases, and in varying language, this proposition has been repeated by the courts.

In *State Tax on Foreign Bonds, 15 Wallace, 319,* it is said:

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property, and business."

In Hays vs. *Pacific Mail Steamship Company, 17 Howard, 596,* it was held that the State of California had no jurisdiction, for the purpose of taxation, over vessels not abiding within its limits, so as to become incorporated with the other personal property of the State.

In *Morgan* vs. *Parham, 16 Wallace, 471,* it is said:

"It is the opinion of the court that the State of Alabama had no jurisdiction over this vessel for the purposes of taxation, for the reason that it had not become incorporated into the personal property of the State, but was there temporarily only, and was engaged in lawful commerce between the States, with its *situs* at

the home port of New York, where it belonged, and where its owner was liable to be taxed for its value."

In *St. Louis* vs. *The Ferry Company, 11 Wallace, 423*, this Court, Swayne, J., said:

"Where there is jurisdiction neither as to person nor property, the imposition of a tax would be *ultra vires* and void. If the Legislature of a State should enact that the citizens or property of another State or country should be taxed in the same manner as the persons and property within its own limits, and subject to its authority, or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action."

In *Delaware Tax Case, 18 Wallace, 229*, this language is used:

"We proceed, therefore, to the second objection of the act, that it imposes taxes upon property beyond the jurisdiction of the State. If such be the fact, the tax to that extent is invalid, for the power of taxation of every State is necessarily confined to subjects within its jurisdiction."

The same principle is held in the *Railroad Company* vs. *Jackson 7 Wallace, 262*. Although this case is criticised in *State Tax on Foreign Bonds, 15 Wallace, 319*, it is there said:

"The decision is, nevertheless, authority for the doctrine that property lying beyond the jurisdiction of the State is not a subject upon which her taxing power can be legitimately exercised. Indeed, it would seem that no adjudication should be necessary to establish so obvious a proposition."

In *Hoyt* vs. *Sprague, 103 U. S., 630*, the general principle is stated that "no State or nation can, by its laws, directly affect or bind property out of its own territory."

The principle is also recognized in the Constitution of the State of Pennsylvania, in the provision that "all taxes shall be uniform upon the same class of subjects *within the territorial limits of the authority levying the tax*." The words italicised are meant to indicate the limit of authority to tax, whether by the State or a municipality.

All the cases which have been referred to are cited and commented upon in *Commonwealth* vs. *Standard Oil Company, supra*, wherein it is said by Paxson, J.:

"Equally well settled is the principle that the power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property, and business. * * * * It is a fundamental principle that the person must have a domicile within the State in order to be taxed, and the *thing* must have a *situs* therein. Persons and property *in transitu* cannot be taxed."

But the taxation here attempted is directly in violation of the commercial clause of the Federal Constitution. It may safely be conceded that where the domicile of the owner is within the State, and the thing sought to be taxed has a *situs* therein, the mere fact that it is engaged in inter-State commerce will not exempt it from a property tax. Boats, railway cars, and other vehicles of transportation may, therefore, be taxed at the domicile of the owner. But the domicile of Pullman's Palace Car Company is not in Pennsylvania. Its cars have no *situs* there, and are present in that State only while *in transitu*, and while engaged in inter-State commerce. The attempt is plainly to tax property beyond the jurisdicion of the State, and to tax it *because* it is engaged in inter-State commerce. The Pennsylvania acts taxing capital stock apply only to such foreign corporations as are "doing business" in the State. No matter how much property a foreign corporation may own in that State, its capital stock does not become subject to taxation unless the company is there engaged in carrying on its corporate business. *Conglomerate Mining Co.* vs. *Commonwealth of Pennsylvania, 44 May Term, 1884*, in Supreme Court of Pennsylvania. Decided October, 1884. Not reported.

It is manifest, therefore, that although the tax imposed is

a property tax, nevertheless the doing of business is the condition upon which the tax is to be imposed. That business being inter-State commerce, the taxation of the property upon such condition becomes a regulation of the commerce itself.

Gloucester Ferry Co. vs. *Pennsylvania*, 114 *U. S.*, 197, was a case involving the same tax and arising under the same act of Assembly as that now before the Court. The Gloucester Ferry Company was a corporation of New Jersey, operating a ferry between Gloucester, in that State, and the city of Philadelphia, at which place the company had a slip or dock at which freight and passengers were received and landed. Its entire business consisted in transporting passengers and freight across the river between those places. Its boats were half the time in Pennsylvania. Exactly one half of its business was transacted in each State. The Supreme Court of Pennsylvania declared that as it did business in Pennsylvania and was equally dependent upon that State for its business, it was taxable upon its capital stock under the act of 1879. But the Supreme Court of the United States reversed this decision, Mr. Justice Field, who delivered the opinion of the Court, declaring that as its business was commerce between the States, it was not a lawful subject of taxation. The former decisions of that and other courts are carefully reviewed in his most thorough and exhaustive opinion, and, commencing upon page 210, he says:

"The ferry boats of the company are registered at the port of Camden, in New Jersey, and according to the decisions in *Hays* vs. *The Pacific Mail Steamship Co.*, and in *Morgan* vs. *Parham*, they can be taxed only at their home port. According to the decisions in the Standard Oil Company case, and by the general law on the subject, the company has no domicile in Pennsylvania, and its capital stock representing its property is held outside of its limits. It is solely, therefore, for the business of the company in landing and receiving passengers at the wharf in Philadelphia that the tax is laid, and that business, as already said, is an essential part of the transportation between the States of New Jersey and Pennsylvania, which is itself inter-state commerce. While it is conceded that the property in a State belonging to a foreign cor-

poration engaged in foreign or inter-state commerce may be taxed equally with like property of a domestic corporation engaged in that business, we are clear that a tax or other burden imposed on the property of either corporation because it is used to carry on that commerce, or upon the transportation of persons or property, or for the navigation of the public waters over which the transportation is made, is invalid and void as an interference with, and an obstruction of, the power of Congress in the regulation of such commerce."

See *Fargo* vs. *Michigan, 121 U. S., 230; Philadelphia & Southern Mail Steamship Co.* vs. *Pennsylvania, 122 U. S., 326; Leloup* vs. *Port of Mobile, 127 U. S., 640.*

In *Philadelphia & Southern Mail Steamship Co.* vs. *Pennsylvania, 122 U. S., 326,* Mr. Justice Bradley, referring to the Gloucester Ferry case, says on page 344:

"It is hardly necessary to add that the tax on the capital stock of the New Jersey company, in that case, was decided to be unconstitutional, because, as the corporation was a foreign one, the tax could only be construed as a tax for the privilege or franchise of carrying on its business, and that business was inter-State commerce."

And so in this case, as Pullman's Palace Car Company is a foreign corporation, the tax upon its capital stock cannot be construed in any other way. Although called a tax on property, it can only be considered as a tax for the privilege or franchise of carrying on its business; that is to say, of permitting its cars to be hauled into, through, and out of the State of Pennsylvania, and that business being inter-State commerce, the tax is unconstitutional and must fall.

But even if that proportion of the capital stock of the company represented by its one hundred cars running into, out of and through the State of Pennsylvania were taxable, nevertheless the proportion is not properly ascertained. It was arrived at in this case "by taking as a basis the proportion which the number of miles operated by defendant in

this State bears to the whole number of miles operated by it, without regard to the question where any particular car or cars were used." (Opinion of the Court, Record, p. 54, folio 88.) The statutes imposing the tax make no provision whatever for an apportionment. In the cases of railroad, canal, and telegraph companies whose public works form a connected whole extending into or through two or more States, the practice of the accounting department of Pennsylvania, sustained by her courts, has been to estimate the value of the line in Pennsylvania upon the mileage basis, it being usually impossible, or at least impracticable, to value separately the parts in the different States. Such a method is approximately fair, but the practice has never been applied to companies other than those having public works of the character stated, or where the property was one indivisable whole extending across a State line and incapable of separate valuations. In other cases the exact values have been appraised and the capital stock apportioned accordingly. *Commonwealth* vs. *Standard Oil Co.*, and *Commonwealth* vs. *Pennsylvania Coal Co., supra.* And even in the case of a railroad company, where the actual value of the property in each State can be determined, a mileage basis will not be adopted. *Commonwealth* vs. *C. C. & A. Railway Co., No. 9, Nov. Term, 1879, in Dauphin Common Pleas.*

And never in any case has any mileage been taken into consideration except that owned by the corporation whose capital stock was to be apportioned. Thus in *Commonwealth* vs. *Western Union Telegraph Co., 363 June Term, 1887,* in Dauphin Common Pleas, the court refused to take into consideration the mileage leased by the telegraph company, and made the apportionment upon the basis of that owned by it. In this case the mileage which is made the basis of the apportionment is, none of it, owned by Pullman's Palace Car Company. It is the mileage of the railroads upon which the Pulman cars are operated. It is not confined to the mileage upon which the one hundred cars are operated, but also

includes mileage upon which several hundred cars were operated which never entered Pennsylvania. Surely the property value of a railway car belonging to one corporation is not determined by a calculation of the number of miles of road of some other corporation over whose line that car may pass. A car which plies backward and forward between New York and Chicago, a distance of one thousand miles, is of no greater value than one which plies between New York and Philadelphia, a distance of ninety miles, and its earnings may be very much less. If any of the Pullman cars were lawfully taxable in Pennsylvania, there would be no difficulty in ascertaining their actual value, and what proportion that actual value sustained to the entire property of the company. There is neither reason nor authority for an estimated value upon a basis so absurd as that adopted here. But it is useless to pursue that branch of the case further, it being evident that none of the cars were taxable in Pennsylvania. The owner having no domicile and the cars no *situs* in that State, the attempt to tax the capital stock of the company, because its business of inter-State commerce is partly there transacted, must utterly and entirely fail, and the judgment of the Supreme Court of Pennsylvania must be reversed.

M. E. OLMSTED,
Of Counsel for Plaintiff in Error.

Supreme Court, U. S.
FILED,
FEB 28 1890
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1889.

No. 6.

PULLMAN'S PALACE CAR COMPANY,
Plaintiff in Error,
vs.
THE COMMONWEALTH OF PENNSYLVANIA,
Defendant in Error.

Error to Supreme Court of Pennsylvania.

TAX ON CAPITAL STOCK.

ARGUMENT OF EDWARD S. ISHAM FOR PLAINTIFF IN ERROR.

EDWARD S. ISHAM,
JOHN S. RUNNELLS,
OF COUNSEL FOR PLAINTIFF IN ERROR.

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Argument for Plaintiff in Error.

The facts upon which the questions here arise are equally free from dispute and from complication. They are found, and stated, in the opinion of the Pennsylvania Court of Common Pleas and appear in the record on pages 53 and 56. The case was one at common law, and under the provisions of a statute of Pennsylvania was by stipulation (Record, page 15) submitted to the court without the intervention of a jury. Under that law the finding of the court upon the facts is conclusive in any appellate proceeding. *Jamison* v. *Collins*, 83 Pa. St., 359; *Lee* v. *Keys*, 88 Pa. St., 175; *Griffith* v. *Sitgreaves*, 90 Pa. St., 161; *Brown* v. *Dempsey*, 95 Pa. St., 243; *Brown, Early & Co.* v. *Susquehanna Boom Co.*, 109 Pa. St., 57; *Gonser* v. *Smith*, 115 Pa. St., 452. This record comes up from the Supreme court of Pennsylvania and not from the Circuit court of the United States. The issues here must, therefore, be confined to inquiry whether that Supreme court erred upon the facts certified to it from the Common Pleas. *National Bank* v. *Commonwealth*, 9 *Wallace*, *363*. The statement of facts by that court is as follows:

"Defendant is a corporation of the State of Illinois, having its principal office in Chicago. Its business was during all the time for which tax is charged to furnish sleeping coaches and parlor and dining room cars to the various railroad companies with which it contracted on the following terms: The defendant furnished the coaches and cars, and the railroad companies attached and made them part of their trains, no charge being made by either party against the other. The railroad companies collected the usual fare from passengers who

traveled in their coaches and cars, and the defendant collected a separate charge for the use of the seats, sleeping berths, and other conveniences. Business has been carried on continuously by defendant in this way in Pennsylvania since February 17, 1870, and it has about one hundred coaches and cars engaged in this way in the State during that time." (Record, p. 53, folio 85.)

"The cars used in this State have, during all the time for which tax is charged, been running into, through and out of this State." (Record, p. 56, folio 94.)

An exception was taken to a finding of the court in the following terms (Record, page 55, folio 91):

"The court erred in not finding as a fact that the cars used in the state of Pennsylvania were also used in other states, their use in Pennsylvania being confined to passages to or from points in other states."

Upon this exception the court (Record, page 56, folio 94) found as follows:

"By the COURT:

We found, as one of the facts in the opinion filed, that 'the cars used in this state have, during all the time for which tax is charged, been running into, through and out of this state,' a finding which in substance *meets the third exception.*"

The question here then is of the power of Pennsylvania to tax the capital stock of a foreign corporation engaging in no other business within her borders than the inter-state transportation of railway passengers. If other questions may be imagined they do not arise on this record. That is the one question designed to be raised and is the one question which the court below decided by the ruling now reviewed.

On account of the business thus engaged in and of the presence in the state of Pennsylvania, for the purpose of such business only, of certain railway cars of the plaintiff in error, the State of Pennsylvania assumed

to impose a tax upon the capital stock of the Illinois corporation, and accordingly the Auditor General and State Treasurer in February, 1881, assumed that *a portion* of the capital of that corporation should be deemed to have a *local investment* in the State of Pennsylvania; and they *estimated* such proportion of the capital stock to be thus constructively there as would be represented by the proportion which the number of miles run in Pennsylvania in performing this inter-state service bore to the whole number of miles run by all the cars of the Illinois company everywhere. On this estimated amount of capital stock a tax was levied for a period of ten years, from 1870 to 1880, and judgment was rendered in the Court of Common Pleas, and affirmed in the Supreme Court of Pennsylvania, for the amount, exclusive of penalties and interest, of $21,109.63. The statutes of Pennsylvania under which the officers of the state assumed to act were, for the years 1870 to 1874, the fifth section of the Act of 1868; for the years 1875, 1876 and 1877, the fourth section of the Act of 1874; from 1878 to 1880, the Acts of 1877 and 1879. The following are the material parts of the statutes referred to:

ACT OF 1868, ENTITLED: "AN ACT TO REVISE, AMEND AND CONSOLIDATE THE SEVERAL LAWS TAXING CORPORATIONS, BROKERS AND BANKERS."

"SECTION 5. That *the capital stock* of all companies whatever, incorporated by or under any law of this commonwealth, or incorporated by any other State, and lawfully doing business in this commonwealth, or that may be hereafter incorporated, except banks and savings institutions and foreign insurance companies licensed in pursuance of the general acts in relation thereto, *shall be subject to and pay a tax* into the treasury of the commonwealth, annually, at the rate of one-half mill for each one per cent. of dividend made or declared by such

company, and in case of no dividend being made or declared by such company, then three mills upon a valuation of the capital stock of the same, made in accordance with the provisions of the second section of this act: *Provided*, That companies liable to tax on dividends in addition to tax on capital stock, prior to the act approved April twelfth, one thousand eight hundred and fifty-nine, entitled, 'An Act to equalize taxation upon corporations,' shall from the said date be exempt from any tax on dividends: *Provided further*, That building associations, plank road or turnpike companies, shall not be liable for any tax to the commonwealth when such companies make or declare no dividends."

ACT OF 1874, ENTITLED, "AN ACT FOR THE TAXATION OF CORPORATIONS."

"SECTION 4. That every railroad company, canal company, steamboat company, slack-water navigation company, *transportation* company, street passenger railway company, and *every other company* now or hereafter incorporated by or under any law of this commonwealth, or now or hereafter incorporated by any other State, and doing business in this commonwealth, and owning, operating or leasing to or from another corporation or company any railroad, canal, slack-water navigation or street passenger railway, or device for the transportation of freight or passengers, or *in any way engaged in the transportation of freight or passengers*, shall be subject to and *pay a tax* into the treasury of the commonwealth, annually, at the rate of nine-tenths of one mill *upon its capital stock* for each one per cent. of dividend made or declared by such company, and in case of no dividend being declared or made by such company, upon either its common or preferred stock, then six mills upon a true valuation of the capital stock of the same, upon which no dividend has been made or declared, made in accordance with the provisions of the third section of this act."

ACT OF 1877, ENTITLED "AN ACT TO EQUALIZE THE TAXATION OF CORPORATIONS AND COMPANIES."

"SECTION 3. That every company or association whatever now or hereafter incorporated by or under any law of this commonwealth,

or now or hereafter incorporated by any other state or country, and doing business in this commonwealth, except building associations, banks, savings institutions and foreign insurance companies, *shall be subject to and pay* into the treasury of the commonwealth, annually, *a tax to be computed as follows*, namely: If the dividend or dividends made or declared by such company or association, during any year ending with the first Monday in November, amount to six or more than six per centum upon the par value of its capital stock, then the tax to be at the rate of one-half mill *upon the capital stock* for each one per centum of dividend so made or declared; if no dividend be made or declared, or if the dividends made or declared do not amount to six per centum upon the par value of said capital stock, then the tax to be at the rate of three mills upon each dollar of a valuation of the said capital stock, made in accordance with the provisions of the first section of this act; and in case any such company or association shall have more than one kind of capital stock, as for instance, common and preferred stocks, and upon one of said stocks a dividend or dividends amounting to six or more than six per centum upon the par value thereof has been made or declared, and upon the other no dividend has been made or declared or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-half mill for each one per centum of dividend made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto, tax shall be charged at the rate of three mills upon each dollar of a valuation, made also in accordance with the provisions of the first section of this act, of the capital stock upon which no dividend was made or declared or upon the par value of which the dividend or dividends made or declared did not amount to six per centum."

ACT OF JUNE 7TH, 1879.

"SEC. 4. Every company or association whatever, now or hereinafter incorporated by or under any law of this commonwealth, or now or hereafter incorporated by any other state or territory of the United States, or foreign government, and doing business in this common-

wealth, or having capital employed in this commonwealth in the name of any other company or corporation, association or associations, person or persons, or in any other manner, except foreign insurance companies, banks and saving institutions, shall be subject to and pay into the treasury of the commonwealth, annually, *a tax* to be computed as follows, namely: If the dividend or dividends made or declared by such company or association as aforesaid, during any year ending with the first Monday of November, amount to six or more than six per centum upon the par value of its capital stock, then the tax to be at the rate of one-half mill *upon the capital stock* for each one per centum of dividend so made or declared; if no dividend be made or declared, or if the dividend or dividends made or declared do not amount to six per centum upon the par value of said capital stock, then the tax to be at the rate of three mills upon each dollar of a valuation of the said capital stock made in accordance with the provisions of the second section of this act; and in case any such company or association shall have more than one kind of capital stock, as for instance, common and preferred stock, and upon one of said stocks a dividend or dividends amounting to six or more than six per centum upon the par value thereof has been made or declared, and upon the other no dividend has been made or declared or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-half mill for each one per centum of dividend made or declared upon the capital stock, upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto tax shall be charged at the rate of three mills upon each dollar of a valuation, made also in accordance with the provisions of the second section of this act, of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum; and it shall be the duty of the treasurer or other officer having charge of any company or association upon which a tax is imposed by this section of this act, to transmit the amount of said tax to the treasury of the commonwealth within fifteen days from the 31st day of December, in each and every year; *Provided*, That whenever such corporation or company shall make any profit and add the same

to its sinking fund, without a division thereof among its stockholders, the amount of the profit thus added to its sinking fund shall be included in the report required by the second section of this act to be made, and for the purpose of this act, the same shall be treated as having been divided amongst the stockholders, and shall subject the capital stock to taxation as a dividend; *Provided, however*, That said money or any part thereof shall be expressly set apart for the payment of debts."

Upon this record the Court of Common Pleas held as follows (Rec., p. 54):

On the facts, defendant claims that no part of its capital stock is invested in this State. The argument is that its cars are personal property, and, as they are not permanently located in this State, but pass into, through and out of it, this personal property has no taxable *situs* in Pennsylvania, and could not be taxed specifically in any given locality; and, therefore, it is contended, as the tax on capital stock is a tax on the property in which that capital is invested, the latter cannot be taxed.

It has certainly been settled by *Commonwealth* v. *Standard Oil Company*, 101 Pa. St., 145, that "a tax upon the capital stock of a "company is a tax upon its property and assets;" but it has never yet, so far as we know, been decided that the capital stock of a company and its property and assets are identical, or that any given part of the former represents any specific articles of the latter. It would be carrying the principle to a dangerous extreme so to decide.

We hold, therefore, that the proportion of the capital stock of the defendant invested and used in Pennsylvania is taxable under these acts, and that the amount of the tax may be properly ascertained by taking as a basis the proportion which the number of miles operated by defendant in this State bears to the whole number of miles operated by it, without regard to the question when any particular car or cars were used.

On appeal the Supreme court affirmed the judgment in the following terms (Rec., p. 61):

Per CURIAM:

We think it very clear that the plaintiff in error is engaged in

carrying on such a business within this commonwealth as to subject it to the statutes imposing taxation. While the tax on the capital stock of a company "is a tax on its property and assets," yet the capital stock of a company and its property and assets are not identical. The coaches of the company are its property. They are operated within this State. They are daily passing from one end of the State to the other. They are used in performing the functions for which the corporation was created. The fact that they also are operated in other States cannot wholly exempt them from taxation here. It reduces the value of the property in this State justly subject to taxation here. This was recognized in the court below, and we think the proportion was fixed according to a just and equitable rule.

Judgment affirmed.

Upon this judgment we assign for error:

First. The court erred in holding that any part of the capital stock of the Pullman Company was subject to taxation by the State of Pennsylvania by reason of its running any of its cars into, out of, or through the State of Pennsylvania in the course of their employment in the inter-state transportation of railway passengers.

Second. The mileage run by such cars in Pennsylvania in the course of such employment furnishes no lawful basis for ascertaining what proportion, or holding that any proportion, of the capital stock of the Pullman Company had local investment or *situs* for taxation in Pennsylvania.

The cars which are the subject of the proposed taxation are the property of a proprietor having no personal domicil within the territory of Pennsylvania, and the property itself is never within that territory except for such time as it is in the course of its actual performance there of its inter-state service. Under

these conditions no jurisdiction can arise in that commonwealth for a tax upon the capital stock of the proprietor corporation. A tax upon the capital stock of the corporation is a tax upon its property and assets. *Commonwealth* v. *Standard Oil Company*, 101 Pa. St., 145; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S., 209.

Jurisdiction over the subject taxed is a fundamental condition of the power to tax; and without domicil of the owner or *situs* of the property, there is no jurisdiction of either.

To exercise the power of taxation the legitimate subject-matter of taxation—persons, property or business—must be found within the jurisdiction of the state.

State tax on Foreign-held bonds, 15 Wall. 319.

"Where there is jurisdiction neither as to person or property, the imposition of the tax would be *ultra vires* and void. * * * Jurisdiction is as necessary to valid legislative as to valid judicial action."

St. Louis v. *Ferry Company*, 11 Wall., 423.

There is no jurisdiction as to person, for the plaintiff in error is a corporation not of Pennsylvania, but of Illinois, and its domicil is there; and there is no jurisdiction over its property, for it never enters the commonwealth of Pennsylvania except in the performance of its service of inter-state transportation, and it *can never by that use* qualify its original foreign *situs* nor acquire another within any jurisdiction, nor become absorbed into the mass of permanent property of any other state.

It is precisely at this point that issue is made. No domicil in Pennsylvania or personal jurisdiction over

the owner is pretended at all. It is a jurisdiction over property which is asserted; and we desire to mark a distinction at this point.

The distinction is this: We are drawn into no controversy with, nor even discussion of the doctrine which engages so large a part of the argument for defendant in error that the property of a non-resident proprietor *may* become so merged and incorporated into the general mass of property as to be taxable like any other property "*located* within the state," or that a state may tax its own corporations and their property as it will, as in the case of *The Delaware Railroad Tax*, 18 Wall., 206; or the rule so strenuously asserted, and illustrated by citation of the case of *The Railroad Company* v. *Massachusetts*, 125 U. S., 530, that the Regulation of Commerce clause in the constitution does not prevent the taxing of "property *located* within the state as the "property of other citizens is taxed."

Accordingly when, as in the case of the *Pullman Company* v. *Twombley*, 29 Fed. Rep., 663, the court says: "We insist that an equal and uniform property tax is "not a regulation of commerce, although it reaches to "and affects property used in inter-state commerce," we stand in no opposition to that statement of law, if the qualification be added which is expressed in the case of the *Gloucester Ferry Co.* v. *Pennsylvania*, namely: "*provided* always the property be within the jurisdiction "of the state." This is simply the rule adjudged by this court in *Leloup* v. *Mobile* as to property "*located* "within the state." The question in the present cause is, (precisely as it was in the Gloucester Ferry case,) whether the subject taxed here *is* within the jurisdiction of the state? And our contention is over the

theory by which such jurisdiction is sought to be extended over it. The very question is whether, under the restraint of that clause of the constitution and the conditions of this case, such property entering a state only in the course of inter-state commerce ever does become commingled with and a part of the general mass of " property *located* within the state." The court, in the present case, has only the single fact to go upon, that actually the property is never in the state at all except in the course of its service in an inter-state transportation, and we contend that it *can never by that use* lose or acquire *situs* for a local taxation. The cars in question cannot *by that employment* become a part of the general mass of property within the jurisdiction for taxation of any state through which they have occasion to be run. That is the question.

The distinguishing feature of the present case is that special prominence is sought to be given to certain conditions, with the idea that they lend exceptional reinforcement to the present assertion of the power to tax. On the other hand, to our mind, the conditions to which such emphasis is given are neither new nor material. We have to do with the identical proposition, naked as a needle, that has so often been considered and passed upon by this court. The conditions to which this assumed importance is attributed are that the cars of the Pullman Company are run, though confessedly in an exclusively inter-state service, in such considerable numbers as to represent a large investment of capital, and not casually or occasionally, but in a regular and continuous service over settled and comparatively permanent lines of inter-state travel.

Inasmuch as any possible difference between the present

case and former ones must be found in these elements, some closer analysis ought to locate with greater precision the specific and exact element of difference. Two elements are involved in the language used, one is the quantity of the investment and the other the regularity or systematic performance of the service. Which of these constitutes the essential distinction? The logic here is as exact as if it were mathematical. In the language of the calculus, a function (of the difference) = the result. Now, what is the function of the difference in the present case, which equals a power to tax excluded in all other cases? It is hard to think that it can be the regularity of the service. A single car run with regularity from New York to Washington on every legal holiday, or at other stated intervals, and back, would hardly, because of its regularity, be taxable for the crossing of Pennsylvania. Cars running without regularity or system, but solely as the exigencies of travel and the opportunities to employ them might make it desirable to send them out, but in actual fact amounting to a very great number of cars extending their service over every part of the year, and running from New York to various points, Chicago, St. Louis, Cincinnati and New Orleans, Washington and Florida, would seem to meet more nearly the terms of the alleged condition upon which the present claim is based. We may perhaps assume, therefore, that the function of the difference above referred to is not the regularity of service, but the aggregate quantity of property always shifting, but present from time to time in a state over which the inter-state service is performed, which gives rise to the right of local taxation, if that right exists at all. For the proposition contended for by the

state is that the performance of an exclusively interstate service of transportation, which involves the transit of cars of a non-resident corporation across the territory of the state, creates when it reaches in magnitude some point, not defined, a local *situs* of some *proportionate part* of the cars making the transit; and that this *proportionate part*, however ascertained, may be treated for taxation as a permanent part of the general mass of property within the state.

It is necessary to say that this claim finds its origin in an opinion of the Circuit court of the United States for the Southern district of Iowa, in the case of *The Pullman Company* v. *Twombley*, 29 Fed. Rep., 658. In the several cases pending in this court in which this doctrine is asserted the opinion of the learned judge in that case is treated as the exponent of the proposition. We must recur to that opinion, therefore, for the expression of the principle with which we have to deal, and for convenience of reference we submit its material portions in the note below.* We yield no precedence in our respect for any reasoning or judgment announced by the eminent jurist who rendered this opinion. But as, being quoted at much length, it constitutes, in the briefs filed, the arguments of the defendants in error upon the subject, we submit with entire deference the considerations which we desire to have examined by the court.

* "It appears that the complainant is a foreign corporation, created under the laws of the State of Illinois, and domiciled in Cook county in that state. It is engaged in the business of manufacturing, using and hiring to be used, sleeping, drawing-room and parlor-cars. It has certain contracts with the various railroads running through the State of Iowa, by which it furnishes to them such cars under contracts providing for their use and operation. . . . These cars are all used

in inter-state commerce; that is, all of them run from points outside the State of Iowa into or into and through the State of Iowa, or from points in the State of Iowa to points outside the state.

"Complainant, therefore, insists that, being instrumentalities used exclusively for inter-state commerce, and the domicile of the owner being outside of the state, they are exempt from taxation by the state. . . . . The state aims to tax that property which it protects, and only to the extent that it furnishes protection. If it cannot do this, it requires but a moment's reflection to see that the state will be shorn of much of what every candid man must feel to be honest revenue. . . . . .

"Now, as stated, the claim of complainant is, that because this property is used in inter-state commerce it is exempt from taxation at any other place than the domicile of its owner. I deny the proposition, and affirm the law to be, that personal property, continuously used in a state, acquires a *situs* in that state for purposes of taxation, and may, at the option of the state, be subjected to an equal property tax, and that, notwithstanding it be used exclusively in inter-state commerce. The state is sovereign except as limited by the federal constitution. A sovereign may tax all property within its jurisdiction, and, unless there be found in the federal constitution some provision taking away this power, the State of Iowa may unquestionably tax this property used within its territorial limits. *Lane Co.* v. *Oregon*, 7 Wall., 77; *Ward* v. *Maryland*, 12 Wall., 427; *Railroad Co.* v. *Peniston*, 18 Wall., 5.

"The restriction on the power of the state is claimed alone by virtue of clause 3 of section 8 of article 1 of the Constitution of the United States, which grants to Congress the power 'to regulate commerce with foreign nations and among the several states.' I insist that an equal and uniform property tax is not a regulation of commerce, although it reaches to and affects property used in inter-state commerce. Such a tax is not similar to a license or occupation tax. They are conditions of, or restrictions upon, the doing of the business, while the former is simply a subjection of the property employed in the business to the common burden of state support. A citizen of Canada, with his only domicile there, may build in the city of Des Moines a sleeping-car. It remains idle and unused. The duty of the state to protect that

property for its owner is clear, and equally clear its correlative right to subject it to ordinary taxation. To provide protection costs money, and the tax is the owner's proper payment therefor. The car may be employed in commerce and run continuously from Davenport to Council Bluffs. The duty of protection and the right of taxation confessedly remain unchanged. Next year it extends its run across the Mississippi river to Rock Island. The duty of protection remains. Has the right of taxation gone? Must both Iowa and Illinois pay for furnishing this citizen of Canada protection to his property, and neither have a right to exact any compensation therefor? Does the regulation of inter-state commerce compel such an absurdity and wrong? If the imposition of an equal and uniform property tax upon the vehicles used in inter-state commerce be a regulation of commerce, the domicile of the owner and the *situs* of the property are immaterial questions. The use determines the exemption, and all such property is released from every burden of state taxation. If it be a regulation of commerce to impose such a tax in Iowa, where the property is found, it is equally so in Illinois where the owner is domiciled. Surely such a sweeping exemption was never within the contemplation of the framers of the federal constitution in granting the power to Congress to regulate inter-state commerce. . . .

Neither does the domicile of the owner furnish, in the present case, any basis of exemption. It is true that the domicile of the owner (the complainant) is in the State of Illinois, and that for many purposes the *situs* of personal property is the domicile of the owner. *Mobilia sequuntur personam.* But for purposes of taxation, tangible property has a *situs* wherever it is found. *Railroad Co.* v. *Pennsylvania*, 15 Wall., 300. Now, these cars—tangible property—are found, and found continuously in the State of Iowa. This is not the case of a car owned in another state making a single trip through the State of Iowa and then returned to the state where it belongs. Such temporary transit, it may be conceded, would not change the *situs* of the property. It is also true, according to the allegations of the bill, that the complainant, being the owner of a thousand or more sleeping cars in use throughout the United States frequently changes cars from one run to another so that identically the same cars may not be continuously in use in the State of Iowa. But this interchange does not

abridge the statement that there is a continuous and constant use in the State of Iowa of the sleeping-cars belonging to the complainant, and, being thus continuously and constantly used in that state, they acquire a *situs* there for the purposes of taxation. As to other tangible property, it goes without saying that its continued presence in a state gives it a local *situs* for purposes of taxation. It is doubtless within the legislative power, by suitable enactment, to establish a *situs* for personal property elsewhere than at the place where it is found, and this fact interprets several decisions of the Supreme court. . . . . .

My conclusion, therefore, is [1] that property is not exempted from liability to an equal and uniform property tax by the fact that it is used, either partially or exclusively, for inter-state commerce; [2] that vehicles of transportation, used constantly and continuously upon a single run, acquire a *situs*, for purposes of taxation, independent and irrespective of the domicile of the owner; [3] such *situs* is not destroyed by the fact that the owner, owning many vehicles of like character, and having lines in various parts of the United States, transfers from time to time such vehicles from one line to another, providing a constant and continuous use of such vehicles is preserved upon the single run; [4] where such vehicles are used upon a run extending through two states, there is a *situs* for taxation in each state to a fair proportion of the value of the property so used."

That a state may tax the railway cars of a foreign corporation which are never present within a state except in transit, or that such presence in a state can give rise to a local *situs* of such property for local taxation is opposed, in our view, to the whole body of decisions of the Federal courts.

Such right to tax receives no support from the cases cited, which hold that a state may tax its own corporations as it may see fit, and may tax the property of non-residents, which is located within the state, as it may tax the property of its own citizens, even though such property be employed in inter-state commerce. Such

a case is *Delaware Railroad Tax*, 18 Wall., 206, which illustrates the proposition that a state may tax its own corporations as it chooses, whatever their occupation may be. Perhaps the State of Pennsylvania, and its counties, may levy upon corporations of its own creation such contributions that they cannot possibly do business and pay the tribute; but the plaintiff in error is not a corporation of Pennsylvania.

Similar irrelevancy is true of cases which illustrate the proposition that a state may tax the property of non-residents which is actually located within the state. Illustration of such cases and of property so located may be found in the case of *The Telegraph Company* v. *Massachusetts*, 125 U. S., 530. There the Telegraph Company had erected its poles and extended its lines of wire and established its offices for business all over Massachusetts. It had a large investment in a plant as definitely located within the state as the roadbed of a railway or the farm of a citizen. In the present case there is no property correspondingly located within the state. We venture to believe that if, in order to transmit a communication from New York to Boston, the telegraph company had capacity to project a line for the delivery of that communication and withdraw it the moment the service was accomplished, there could be no tax upon the property that performed that service, no matter how often the service might be repeated. In the case of *The Standard Oil Company*, 101 Pa. St., 119, that company was taxed only upon its property in certain local partnerships doing business in Pennsylvania. The plaintiff in error has no such interests, nor any local plant in Pennsylvania such as the telegraph company had in Massachusetts. It

owns no railways on which it runs its cars run over the tracks of railways owned and operated by other corporations. They are always in motion. In the inter-state service shown in this record they fly across the state like carrier pigeons. They have no abiding place but the domicil of the company in Illinois. When they cease to be active it is thither they return. They never *enter* another state *with a purpose to remain*, nor for the *purpose* of business *within it*.

It is said: "No case can be found in which the Su-" preme Court has declared a mere property tax void " *on the ground that the property on which it was imposed* " *was employed in inter-state commerce*." But it is to be borne in mind that that is not the proposition at present in issue. The proposition is *not* that all property employed in inter-state commerce is exempt from taxation, but that the property of a proprietor domiciled in one state cannot acquire a *situs* in another state, giving jurisdiction for taxation there, merely by use there in exclusively inter-state commerce. It is not that the use in inter-state commerce exempts property over which jurisdiction otherwise would exist, for taxation, but that where no jurisdiction otherwise exists its use within a state exclusively for inter-state commerce cannot of itself originate such jurisdiction. It is also said:

" This is not the case of a car owned in another state making a " single trip through the state of Iowa, and then returned to the state " where it belongs. Such temporary transit, it may be conceded, " would not change the *situs* of the property. It is also true, accord-" ing to the allegations of the bill, that the complainant, being the " owner of a thousand or more sleeping-cars in use throughout the " United States, frequently changes cars from one run to another, so " that identically the same cars may not be continuously in use in the

" state of Iowa. But this interchange does not abridge the statement " that there is a continuous and constant use in the state of Iowa of " the sleeping-cars belonging to the complainant, and, *being thus* " *continuously and constantly used in that state, they acquire a situs* " *there for the purposes of taxation.*"

Now this last clause is but a *statement of the proposition* under discussion.

The decisions of this court, and of nearly every other, are that such property so used does not become a part of the mass of property within the territory of any state, and acquires by such use no *situs* which can give rise to any jurisdiction for local taxation.

In *B. & O. R. R. Co.* v. *Allen*, 22 Fed. Rep., 876, in the Circuit court of the United States, W. D. Virginia, it was held that the Baltimore and Ohio road, being a foreign corporation, its rolling stock used in operating leased roads in the State of Virginia, was not liable to taxation.

In the case of the *Standard Oil Company*, taxes were claimed by Pennsylvania by reason of the ownership of shares of stock in certain Pennsylvania corporations, and of merchandise in the state brought there for sale, and of *interests in certain local partnerships doing business in the state.* This last item clearly represented a local investment of capital, and a doing of business in the state like any other resident merchant. But the court held that apart from that the state had no jurisdiction to further tax the capital stock, *i. e.* the property of the Standard Oil Company, for " it was a fundamental prin- " ciple that, in order to be taxed, the person must have " a domicil in the state, and the thing must have a *situs* " therein; that persons and property *in transitu* could " not be taxed." That judgment was cited by this court

as an authority for its opinion in the *Gloucester Ferry* case; and how the same court that gave the opinion in the *Standard Oil Company* case could have held as it did in the *Gloucester Ferry* case or in this present case, we are at a loss to understand.

The adjudications of this court upon the exact point in issue, are many, uniform and explicit. In *Hays* v. *The Pacific Mail Steamship Company*, 17 How., 597, it was held that an ocean steamer, owned and registered in New York, and *plying regularly* between Panama, San Francisco and ports in Oregon, was not subject to taxation by the State of California. The tax was assessed by the State of California, upon a line of twelve steamships plying along this line, having agencies at various places, and among others at San Francisco, and a naval dock and ship-yard in that state for furnishing and repairing their steamers. Their business was the transportation of passengers and merchandise between New York and San Francisco by way of Panama, and between San Francisco and ports in Oregon. It would be idle to quote at length this familiar case. It was held that if the State of California could impose a tax, any other state, into whose ports the vessels might enter, might do the same; that though there might be more delay and the vessel might lie longer at one port than another, that would be a "matter accidental, which in "no respect could affect the question as to the *situs* of "the property, in view of the right of taxation by the "state." In running to the ports of different states, such a vessel is "within the jurisdiction of all or any "of them temporarily, and *for a purpose wholly exclud-* "*ing the idea of permanently abiding* in the state."

The court further said:

"We are satisfied that the state of California *had no jurisdiction* over these vessels *for the purpose of taxation;* they were not, properly, abiding within its limits, so as to become incorporated with the other personal property of the state."

CAMPBELL, J., said:

"The material fact is that the vessels were *in transitu*, having no *situs* in California, nor permanent connections with its internal commerce."

In *Morgan* v. *Parham*, 16 Wall., 471, the adjudication was to the same effect, namely, that a vessel belonging in New York was exempt from taxation in Alabama, not necessarily because of her employment in inter-state commerce, but because *that employment precluded her acquiring* a *situs* for taxation at any point to which her employment might lead her, and *precluded her becoming blended* with the mass of property of any such locality. The court, though the vessel was physically within the limits of the city of Mobile, likened its status there to that of "a traveler on that day passing through "that city in his private carriage, or an emigrant with "his worldly goods on a wagon", and said:

"It is the opinion of the court that the State of Alabama had *no jurisdiction* over this vessel for the purpose of taxation, for the reason that it had not become incorporated into the personal property of that State, but was there temporarily only, and that it was engaged in lawful commerce between the States with its *situs* at the home port of New York where it belonged, and where its owner was liable to be taxed for its value."

The Supreme court of New Jersey has passed directly upon this subject. A statute of that state declared that if a railroad of New Jersey was under lease to a foreign corporation, any tangible personal property of such foreign company, if used or kept but a part of the time

in the state, should be assessed such part of its value as should be proportionate to the period of time, out of the whole year, which it was kept in the state. Certain engines and cars of the foreign company used on its leased line in New Jersey in the course of inter-state commerce were assessed, and in *Central R. R. Co.* v. *State Board of Assessors*, 49 N. J. Law, 1, it was held that the tax upon such property employed in inter-state commerce was illegal. The Supreme court, by BEASLEY, C. J., said:

"The Philadelphia and Reading Company is taxed in this manner because it is a foreign corporation, operating a railroad in this state as a lessee. This corporation was incorporated under the laws of Pennsylvania, and has its principal office and place of business in the city of Philadelphia. The property taxed is held by it either as general or special owner. It is taxed on the basis of being used part of the time, on the roads leased by the company in this state, and the tax is graduated by the length, in point of time, of such use. *It appears from the proofs that such use consists almost entirely in the transportation of passengers and merchandise across the territory of this state in the course of inter-state commerce.* The road is made up, in part, of leased roads in other states and in this state, and the equipments taxed are devoted to this business over the entire line. The company carries passengers and goods occasionally from place to place in this state by means of these trains, and as an incident merely to its business of assisting in the commerce between the states.

"The question, therefore, arises: What jurisdiction has this state, for the purposes of taxation, over this property?

"It is obvious that these things have no *situs* in this state; they are merely here *in transitu*. The circumstance that they pass over a road in this state leased by the owner of them cannot so annex them to the road as to make them taxable as a part of it. The owner of the property has a foreign domicile, which is the permanent *situs* of the property, it being brought into this jurisdiction solely in consequence of the general business followed by the corporation and which has been already characterized. * * *

"We look upon that property, and which is owned by a non-resident, as being here in this state solely because it is an instrumentality of inter-state commerce, and we think, under such conditions, that it cannot be, to any degree, directly taxed by this state."

The foregoing case cites with approval the case of the *Pullman Southern Car Company* v. *Nolan*, 22 Fed. Rep., 276. In that case Mr. Justice MATTHEWS, holding unconstitutional a statute of the State of Tennessee said:

"In the present case the Pullman Southern Car Company, a corporation of Kentucky, has no domicile in Tennessee, and is not personally subject to its jurisdiction for purposes of taxation, and the sleeping cars *which it runs and uses upon the railroads of that state, in the transportation of passengers into and from it, from and to other states*, have no *situs* within that state *for the purposes of taxation. They are not brought into the state for the purpose* of being employed *in a business carried on within it*, and *do not become a part of the mass of property* within the *jurisdiction of the state for purposes of taxation.* They are in the state only as passing to and from it while in the act of transportation, performed by virtue of a right secured to the owners of them; not by the authority of the laws of Tennessee, but by virtue of a right secured by the exclusive jurisdiction of Congress under the constitution."

The spear of Ithuriel never touched keener or truer than do these words which were also substantially used in *Hays* v. *The Pac. Mail &c. Co.* Such use of cars creates no local *situs*, for "they are *not brought into* "the state for the *purpose* of being *employed in a business* "*carried on within it.*" Therefore, they *do not become a part of the mass of property* within the jurisdiction of the state for the purpose of taxation.

In *P. W. & B. R. R. Co.* v. *Appeal Tax Court of Balt.*, 50 Md., 416, the Supreme court of Maryland said:

"The engines and cars of the appellant *have no abiding place* or

permanent location in this state, *so as to become incorporated with the other permanent property of the state*, and are only brought here transiently, while employed in the operations of the road."

It was thereupon held that this rolling stock was not taxable in Maryland. And in the same court, in *Appeal Tax Court of Balt.* v. *Pullman Palace Car Company*, 50 Md., 452, where the precise question pending here was at issue, the court held that the cars of the Pullman company were not taxable, and said that the question had been definitely settled by its decision above quoted from in the case of the *Phila., Wilm. & Balt., R. R. Co.*

In *Pickard* v. *The Pullman Southern Car Company*, 117 U. S., 34, the relation of the Pullman cars to the state of Tennessee was identical with that in the present case to the State of Pennsylvania. The Pullman cars ran through, into and out of the State of Tennessee in an employment precisely such as is shown in this record. The opinion of Mr. Justice BLATCHFORD in that case is characterized by Mr. Justice MILLER in *Fargo* v. *Michigan* as "an exhaustive review of the previous decisions in" this class of cases;" and in that opinion the court said:

"As such vehicle of transit the car, so far as it was engaged in interstate commerce, was not taxable by the State of Tennessee; because the plaintiff had no domicil in Tennessee, and was not subject to its jurisdiction for purposes of taxation; and the cars had no *situs* within the State for purposes of taxation; and the plaintiff carried on no business within the State, in the sense in which the carrying on of business in a State is taxable by way of license or privilege. (P. 46.) In the case at bar the plaintiff was not a Tennessee corporation, and had no domicil in Tennessee, and the sleeping cars in question, as before said, had not any *situs* in Tennessee for the purposes of taxation." (P. 50.)

The case of *The Gloucester Ferry Company* v. *Pennsylvania*, 114 U. S., 196, leaves nothing to be added to the line of authority which seems to put an end to the doctrine now again urged upon this court. It would be idle to re-state the familiar details of that well-known case; and no more comprehensive or conclusive argument can be supplied in this case than the opinion handed down in that one. The boats of the Ferry Company, plying continuously in an inter-state service between the shores of New Jersey and of Pennsylvania, having their home in New Jersey but spending half their time and performing half their service in Pennsylvania, were nevertheless (1) not doing business within that state, (2) became never commingled with the general mass of property there, (3) nor by their presence or employment acquired any local *situs* there for taxation.

The cases of *Hays* v. *The Pacific Mail Steamship Company*, 17 How., 596; *Morgan* v. *Parham*, 16 Wall., 471; *St. Louis* v. *The Ferry Company*, 11 Wall., 423; *Pickard* v. *The Pullman Company*, 117 U. S., 34 (where the service and the conditions were identical with the present ones), and *The Gloucester Ferry Company* v. *Pennsylvania*, 114 U. S., 196, do each and all of them embrace every element upon which argument in support of the claim of defendant in error is based. In each and all of them were the elements suggested for special consideration in this case.

Nothing can be more regular than the service of a ferry company; no lines more settled and permanent than those along which it operates. If there be but one boat, it is half the time in the foreign state. If there be two, though the individual boats are changing, there will always be the equivalent of one boat there; if the

number be multiplied indefinitely, one-half of the investment will be permanently in the foreign state, and will perform there under the shelter and protection of its laws one-half of the business of the company. Every element, which is conceived to differ the present case from those above cited is involved in them and received in them the exhaustive examination of this court. The regularity of the service; the permanence of the lines of operation; the magnitude of the investment measured by the quantity of the property employed; the shifting and change of individual vehicles, but the continuity of the presence within the state of property employed in the service; the continuous performance physically within the state of a regular part of the business in which the vehicles are employed; and their protection by the state while within its territory, all these were present in each of those cases. The well considered, uniform and emphatic adjudications of this court, and of the highest courts of the several states, have been that foreign property so employed, does never by that use alone blend with the mass of local property, nor acquire any new *situs*, nor become engaged in "business within the state" in any sense that gives a power of local taxation.

Thus far we have stated the basis of authority by which this construction of the constitution is established; but the correctness of these constructions itself is questioned. It is said: "Surely such a sweeping exemption was "never within the contemplation of the framers of the "federal constitution in granting the power to congress "to regulate inter-state commerce." In the case of *The Pullman Company* v. *Hayward, Treasurer, etc.*, number 319 of this calendar, and ordered by the court to be

heard in connection with the present case, the Attorney General of the State of Kansas, on page 39 of his brief, quotes Mr. Hamilton in The Federalist, number 32, in support of his proposition, as follows:

"This commerce clause of the constitution, so often "invoked upon questions relating to inter-state com- "merce, was not intended by the framers of the consti- "tution, if we may judge from the most authoritative "contemporaneous expositions of the constitution at "the time of its adoption, to trench upon the powers of "the states in raising their own revenues by taxation of "property *used* within their own limits."

The right of the state as an independent sovereign power to tax is asserted in the present case to an extent far beyond the limits allowed by the above adjudications.

We need not discuss the prerogative of each of the separate states, and whether they are the same as those of absolutely independent nations. As such, each one would have exclusive powers of sovereignty and jurisdiction throughout its territory, and its taxation might reach all property, whatever the circumstances might be under which it had come within its borders. Any consideration accorded to foreign laws, and any qualification in actual conduct of this primary prerogative would depend at all times absolutely on the consent, express or implied, of the state itself. But in practical affairs, every government does put bounds to the exercise of this absolute prerogative. Every state does accord an operation, more or less extended, to foreign laws and to rights existing under those laws to property within its own territory. Every nation has found its advantage in this course, and bases it upon considerations of utility and mutual con-

venience resulting in the benefit of its own citizens. Accordingly, that which is known as comity, the comity of states, has gradually formulated itself into a system of rules and precedents. and all states consent to limit the exercise of their primary power and absolute right by what is no longer the caprice, but a rule, of comity. Doubtless up to a certain line this is the only limitation to which states in the Federal Union are subject. Ordinarily the rule that as to *situs* personal property follows the domicil of its owner is merely a voluntary concession of the state that adopts the rule. It is a rule of comity rather than an absolute principle (*Green* v. *Van Buskirk*, 5 Wall., 312), and what is so strongly insisted upon by counsel is true that the state has power to separate for purposes of taxation the *situs* of personal property over which it has jurisdiction, from the owner's domicil. That is a primary rule, and it is based upon the sovereignty of the states and the idea that they are foreign to each other. All this is true until we come to the line of constitutional interference.

But with the power of the states in that foreign relation to each other we have nothing to do. Wherever they come within the obligation and effect of the provisions of the federal constitution they are no longer foreign to each other. The states are foreign to each other it is held, *for all but federal purposes*. For federal purposes they are not foreign, nor sovereign, nor independent, and every purpose is a federal purpose for the sake of which the arch of federal supremacy is thrown over them. Such a purpose is the regulation of commerce. That whole subject is brought within the supremacy of the federal government. As to that the states are not foreign to each other, and no argument

has any force which is founded upon the idea of their independent sovereignty or upon analogies between foreign states. Within the entire range of obligation of the constitution we are one people, like the people of a single state; and such is the emphatic declaration of this court in the statement of Mr. Justice BRADLEY in *Robbins* v. *The Taxing District*, 120 U. S., 494, where he says: "In a word, it may be said, that *in the matter of inter-*"*state commerce*, the United States are *but one coun-*"*try*, and are and must be subject to one system of reg-"ulations, and not to a multitude of systems." The result is that while it is not to be doubted that taxation is a correlative of protection, and that taxes are the price of the protection afforded, there is nevertheless no power in the states to tax for *protection extended over this commerce.* That power is taken away; the states are bound to protect it without such compensation; but there is no solecism involved in this exemption. Their compensation is found in the reciprocity that is established, the mutual obligation that binds all the states as between themselves. Property entering into a state for the federal purposes of inter-state commerce, and for that only, *cannot be taxed for its lawful protection in that use.*

Whether the case of a foreign nation is identical, and whether the illustration drawn from a supposed case with Canada is pertinent, are questions it is not necessary to consider until the case arises. There can be no doubt of the supremacy of Congress, however, over all that subject also, nor that in relation to commerce the states, as between themselves, are not foreign to each other.

In view of this, it is very plain that cases in which the

Supreme court of Illinois may have recognized the right of the several counties of that state to tax the cars of the Pullman Company, though their domicil is in but one county, can have no application. The State of Illinois may tax its own corporations as it will. If it chooses it may place upon them such burdens of taxation, and permit its counties to do the same, that they cannot possibly do business and pay the tribute. But the counties of Illinois cannot tax without the consent of the state, nor are the several states, so far as federal purposes and constitutional limitations subordinate them, any more foreign to each other than counties. Therefore, as against this constitutional clause which exempts all inter-state commerce from burden, they cannot impose a burden by taxation without having the consent of Congress, as the counties of Illinois have the authority of the state. When they have obtained this consent of Congress, and the right is then contested, this argument, by analogy, will have application and weight but not until then.

The counsel for the Commonwealth of Pennsylvania says:

"This case does not present a case of taxation of property *in transitu*, nor does it present any question as to the *situs* of rolling-stock of railways, as such questions are ordinarily presented. The property represented by the capital stock taxed is not moved for the purpose of consummating a single transaction, nor transported for the mere purpose of changing its place from one situation to another, but is continuously and permanently employed in going to and fro upon certain routes of travel as the means of carrying on an established and permanent business. The *lines* of Pullman's Palace Car Company are as *permanent*, in *legal contemplation*, having regard to the kind of business in which they are engaged, as the lines of railroad upon which

they run. They are as permanent as pipe lines for the transportation of oil, or as telegraph lines for the transportation of messages." *

If, out of such a distinctively inter-state service of cars that are always in motion, never entering the state for the purpose of abiding there, not the cars nor any of them, but an imaginary quantity representing a proportionate part of the investment in them is taxable in any state through which they run, then that quantity must be so taxable because the component parts of it are. These component parts are the several imaginary contributions of each of the separate cars. The whole conception is metaphysical, both the taxable aggregate and its factors. The aggregate time in the state of each moving car is a factor in the aggregate time of the moving mass of a hundred cars, and any taxable quality of the aggregate must be derived from that quality in each of its factors. If a hundred cars represent a *situs* for taxation of the equivalent of ten, then ten make up such a *situs* for one car and one for one-tenth of its value. But it is conceded that in "the case of a car owned in another State *making* "*a single trip* through the State of Iowa and then re- "turned to the State where it belongs, such temporary "transit would not change the *situs* of the property." How then, can two or three hundred cars make up a sensible quantity to which each car contributes nothing? How can two or three hundred nothings make up by addition a sensible quantity that shall be taxable? The dialectics of creeds and philosophies are barren of greater mysteries than these.

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* This citation is from his brief filed on the former argument of this cause at the last term, page 10. We have, of course, no other.

But now, if from the point which counsel has thus reached, we turn to retrace his processes, we shall never come to the point from which he started. Setting out with a sensible quantity and going by clearer light, that quantity can hardly disappear by the way without our perception of the point of its disappearance, and we shall conclude that if this spectral aggregate derived from our two hundred cars be really a part of the local mass of property, it is because it is made up of contributions having the same character, from each of the two hundred cars. It follows that a proportion of the value of each passing car has permanent location in Pennsylvania and gives a proportionate basis for taxation of capital stock. But this is precisely what this Court has expressly denied in the *Pickard* case, and in the *Gloucester Ferry* case; which proves that in going out we had some *ignis fatuus* for a guide, and that in the confused light of it we ran into a blind switch which has wrecked us in this limbo of inconsistency and confusion.

But let us see further to what this proposition would lead, if, for the sake of the argument, it be conceded. If the doctrine be established, it makes an end of any exclusive jurisdiction of Congress under the commerce clause, and, practically, of any domain of control by Congress at all. By the *hypothesis* this taxable quantity which comes into existence through the operation and presence in the state of an indefinite number of cars in inter-state service, but which is itself, when created, not a part of the cars themselves nor of any of them, is nevertheless *something which is* a part of the permanent mass of property in the state, and has a local *situs* there for tax-

ation. As such, by the hypothesis, it may be taxed as the state taxes other property definitely located in the state, and *as it taxes the property of its own citizens.* Being thus a part of the general mass of property located in the state, it is delivered altogether from the effect of the constitution, and is subject solely to the local law like other property having permanent *situs* there.

Plainly the power asserted here is not a mere right of the state to meddle till Congress acts. What is asserted is the primary power of a sovereign state over the subject-matter. It is a power as independent of the constitutional provision we invoke, and as superior to it as the power of the state to tax any of its citizens or the land within its territory. It is on this footing that the right to tax capital stock is said to be established.

If that be done, then the subject is withdrawn entirely from federal interference and from the jurisdiction of federal courts. The action of the state in taxing the property over which it has jurisdiction gives no ground for federal intervention. The jurisdiction of the state and its right to tax being established, the power of the state is beyond any control.

In *Weston* v. *Charleston*, 2 Pet., 466, Chief Justice MARSHALL said:

"If the *right to impose* the tax exists, it is a right which, in its nature, *acknowledges no limits.* It may be carried to any extent within the jurisdiction of the state or corporation which imposes it, which the will of each state and corporation may prescribe."

In the *Delaware Railroad Tax*, 18 Wallace, 231, the court said:

"The state may impose taxes upon the corporation as an entity existing under its laws, as well as upon the capital stock of the corpora-

tion, or its separate corporate property. And the *manner in which its value shall be assessed*, and the *rate of taxation, however arbitrary or capricious*, are mere matters of legislative discretion. It is not for us to suggest in any case that a more equitable mode of assessment, or right of taxation might be adopted than the one prescribed by the legislature of the state; *our only concern is with the validity of the tax; all else lies beyond the domain of our jurisdiction.*"

In *State Tax on Foreign-held Bonds* 15 Wall., 300, this court said:

"Unless restrained by provisions of the federal constitution *the power of the state, as to the mode, form and extent of taxation is unlimited where the subjects to which it applies are within her jurisdiction.*"

This language is cited and re-affirmed in *Kirtland* v. *Hotchkiss*, 100 U. S., 497. The power asserted by the state, therefore, if it exists, is, by reason of the ground on which it stands, beyond the domain of the jurisdiction of this court, and beyond control. But the tax upon capital stock of a corporation is a tax upon its property and assets. By the argument, therefore, the mere presence of these cars in the state while in transit and performing an inter-state service, gives rise to a power in every state through which they pass to tax the property and assets of the foreign corporation which owns them, and employs them in that service. A car running from New York through Pennsylvania to New Orleans, runs through ten states; a car running from New York through Pennsylvania to Florida, runs through nine states, in a continuous but single service. Every one of these states may tax the property and assets of a foreign owner arbitrarily, and even capriciously. Now, this power to tax has been declared by this court in *McCulloch* v.

Maryland, 4 Wheat., 316, and in *Crandall* v. *Nevada*, 6 Wall., 35, with great vigor of illustration, and in many other cases, to be the equivalent *of a power to destroy*. If a state may tax at all the property and assets of a foreign corporation engaged in such business, it may tax them to such an extent as to make the conduct of that business impossible. The bald result is that employment of railway cars in transportation admitted to be distinctively and exclusively inter-state, gives rise to a power of local taxation by which the inter-state business may be burdened, over-burdened and prohibited. Such a power is said in *McCulloch* v. *Maryland*, to be *repugnant to the supremacy* of the constitution. This result in itself is the *reductio ad absurdum* of logic which disproves the proposition upon which it is based. It is false in its premises and false in the steps of its logic, for no amount, not an *infinite* addition of nothings, can make a sensible quantity; and if it did the power of state taxation originated would evade and defeat the provision of the constitution, and is therefore inhibited by it. "Questions of power" said MARSHALL, C. J., in *Brown* v. *Maryland*, 12 Wheat., 439, "do not depend on the degree to which it may be exercised."

A tax imposed by a state upon the capital stock, in other words upon the property and assets, of a foreign corporation engaged there in inter-state transportation is, in effect, a condition imposed upon its right to do that business, within or across that state. As a rule, perhaps, states may prescribe the conditions upon which foreign corporations may do business within their limits, but in *Phila. Fire Association* v. *New York*, 119 U. S., 110, the court carefully excluded any implication that that power could extend "to an interference with the trans-

"action of commerce between that state and other "states by a corporation created by one of such other "states." *Robbins* v. *Shelby Taxing District*, 120 U. S., 489. A transportation company, or a corporation engaged in the business of inter-state transportation cannot be subjected by any state to conditions upon its right to carry on such inter-state intercourse within its limits. *Fargo* v. *Michigan*, 121 U. S., 230. A tax on capital stock, and so upon the property and assets of a corporation, is in effect the same as a license tax, or a tax on the privilege of doing the business. The test of the validity of a tax, under the constitution, is the subject on which its burden falls and its ultimate effect. It is in effect a tax on the operation of inter-state commerce, for compliance with it is a condition upon which alone the business may be done by vehicles *entering the state for no other purpose*. The basis of the tax is removed from federal cognizance. It is declared to be identical with the right of the state to tax land or other property located within its borders. The question of the *extent* of such taxation is beyond the scope of federal interference. The condition must then be complied with, or the state may, if at all, tax so heavily as to make the crossing of its territory too costly. Without declaring the crossing illegal, it may still so burden the business that no one can pay the tribute. Perhaps it would not, but this court, by MARSHALL, C. J., in *McCulloch* v. *Maryland*, declared that the discretion on such a subject had not been reposed in any state.

A state cannot evade the inhibition of taxation by any declaration of its own as to the real character of the contribution it levies. In the *Pickard* case, a tax was declared to be a privilege tax, but was imposed directly

upon the cars. It was held that, "as these cars were "not property located within the state, it was a tax for "the privilege." It could not be a tax on the property, for there was no jurisdiction for that; it was, therefore, a tax or tribute laid upon that specific inter-state business. A state cannot establish a power to affect commerce by its declaration that a given article is not an article of commerce. *Bowman* v. *Railroad Co.*, 125 U. S.,465. It is equally powerless, and by a parity of reason, to fasten taxation on property used only in inter-state transportation by a declaration that a *situs* for taxation exists, or that a given amount of such use will be equivalent to a permanent commingling with the general property of the state of the property so used exclusively. If such a declaration of the state is futile, it is because the result aimed at is unlawful under the constitution. It is the nature of the use, not the amount of it, which excludes the power of the state.

It was a delusion of the commercial states in the time of the Confederation, that individual states might profit in a condition of things that permitted one to levy contributions on its allied neighbors. The delusion cured itself, and was intelligently abandoned under the constitution. But these revivals of the old Hellenic appetite that in about sixty years have drawn more than a hundred adjudications from this court show that it is not extinguished nor slaked, but only chained down by the bonds of the federal Constitution.

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Supreme Court U. S.
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In the Supreme Court of the United States.

OCTOBER TERM, 1888.

No. ~~32~~. 31.

Pullman's Palace Car Company,

Plaintiff in Error.

vs.

The Commonwealth of Pennsylvania,

Defendant in Error.

ERROR TO SUPREME COURT OF PENNSYLVANIA.

TAX ON CAPITAL STOCK.

DEFENDANT'S BRIEF.

JOHN F. SANDERSON,
Deputy Attorney General.

W. S. KIRKPATRICK,
Attorney General.

In the Supreme Court of the United States.

OCTOBER TERM, 1888. No. 32.

PULLMAN'S PALACE CAR COMPANY,
Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA,
Defendant in Error.

ERROR TO SUPREME COURT OF PENNSYLVANIA.

TAX ON CAPITAL STOCK.

ARGUMENT FOR DEFENDANT IN ERROR.

Pullman's Palace Car Company is a corporation of the State of Illinois, having its principal office in Chicago. Its corporate business, during all the time for which the tax in question is charged, was to furnish sleeping coaches and parlor and dining-room cars to various railroads, with which it contracted on the following terms:

The company furnished the coaches and cars, and the railroads attached them to and made them part of their trains, no charge being made by either party against the other. The railroad companies collected the usual fare from passengers who traveled in their coaches and cars, and the company collected a separate charge for the use of the seats, sleeping berths and other conveniences. The cars were run continuously upon certain lines of travel, some of which were entirely within the State of Pennsylvania, but most were lines of travel extending from without into, or from within out of, or through the State of Pennsylvania. Persons traveling from point to point within the State were taken up and put down upon the lines running interstate. Business has been carried on continuously in this way in Pennsylvania since February 17, 1870, and during the period covered by the tax in question, to wit, up to and including the year 1880.

The tax in question was imposed under successive acts of Assembly, similar in character, of 1868, 1874, 1877 and 1879, the material portions of which are set forth at length in plaintiff's brief, pages 2, 3, 4 and 5. These acts provide for the taxation of the capital stock of all companies existing by the law of the State, or lawfully doing business therein, with certain exceptions, and by these acts the capital stock of all such companies, so existing, or doing business, are taxed at the same rate and in substantially the same manner.

I.

IT IS COMPETENT FOR A STATE TO TAX UPON AN AD VALOREM BASIS PROPERTY EMPLOYED IN THE OPERATIONS OF INTERSTATE COMMERCE, IN LIKE MANNER AND AT EQUAL RATES WITH OTHER PROPERTY.

Most cases in this court, wherein the subject of regulation of commerce among the several States has been discussed, with reference to taxation, and wherein various taxing statutes have been declared inoperative as to the business of interstate commerce, have expressly excepted from the ban of the Constitution property taxes.

Thus Chief Justice Waite, speaking for the Court, in *Telegraph Company* v. *Texas*, *105 U. S.*, *460*, *464*, said:

"The Western Union Telegraph Company, having accepted the restrictions and obligations of this provision by Congress, occupies in Texas the position of an instrument of foreign and interstate commerce, and of the government agent for the transmission of messages on public business. Its property in the State is subject to taxation the same as other property, and it may undoubtedly be taxed in a proper way on account of its occupation and its business. The precise question now presented is whether the power to tax its occupation can be exercised by placing a specific tax on each message sent out of the State, or sent by public officers on the business of the United States.

Thus Miller, J., speaking for the court in *Western Union Telegraph Co.* v. *Massachusetts*, *125 U. S. 530*, *540*, referring to the case above cited, as it applied to the case then under discussion, said:

"This authority of the government gives to this telegraph company, as well as to all others of a similar character who accept its provisions, the right to run their lines over the roads and bridges which have been declared to be post roads of the United States. If the principle now contended for be sound, every railroad in the country should be exempt from taxation because they have all been declared to be post roads; and the same reasoning would apply with equal force to every bridge and navigable stream throughout the land. And if they were not exempt from the burden of taxation simply because they were post roads, they would be so relieved whenever a telegraph company chose to make use of one of these roads or bridges along or over which to run its lines. It was to provide against the recognition of such a principle that this court, in the case above cited, while holding that telegrams themselves coming from without a State or sent out of it as a part of their conveyance could not be taxed by the State specifically, nevertheless used the language that 'its property in the State is subject to taxation the same as other property, and it may undoubtedly be taxed in a proper way on account of its occupation and its business.'"

And again, p. 548:

While the State could not interfere by any specific statute to prevent a corporation from placing its lines along these post-roads, or stop the use of them after they were placed

there, nevertheless the company receiving the benefit of the laws of the State for the protection of its property and its rights is liable to be taxed on its real or personal property as any other person would be.

Thus Bradley, J., speaking for the Court in *Leloup* v. *Port of Mobile*, *127 U. S., 640, 649*, said:

We may here repeat what we have so often said before, that this exemption of interstate and foreign commerce from State regulation does not prevent the State from taxing the property of those engaged in such commerce, located within the State, as the property of other citizens is taxed, nor from regulating matters of local concern, which may incidentally affect commerce, such as wharfage, pilotage and the like.

These are the most recent statements of this court upon that subject, and they are supported by decided cases directly in point, to which it is unnecessary to refer.

II.

THE TAX IN QUESTION IS A TAX UPON PROPERTY LEVIED UPON AN AD VALOREM BASIS, IN LIKE MANNER AND AT EQUAL RATES UPON ALL THE SUBJECTS UPON WHICH IT IS IMPOSED.

The act of 1868 applied to the capital stock of all companies existing under any law of the State or incorporated by any other State, and lawfully doing business in Pennsylvania, except banks, saving institutions and foreign insurance companies, and, under certain conditions, building societies, plank roads or turnpike companies.

The act of 1874 applied to all companies existing under any law of the State, or incorporated by any other State, and doing business in the State, which were in any way engaged in the transportation of freight or passengers.

The act of 1877 applied to all companies or associations existing under any law of the State, or incorporated by any other State or country, and doing business in the State, except building associations, banks, saving institutions and foreign insurance companies.

The act of 1879 applies to every company or association existing under any law of the State or any law of any other

State, territory or foreign government, and doing business in the State,or having capital employed therein in the name of any other company or corporations,association or associations, person or persons. or in any other manner, excepting foreign insurance companies, banks and savings institutions.

Each of the statutes cited imposes the tax upon the value of the capital stock. When no dividend is declared the value is ascertained by appraisement. When a dividend is declared, then the tax is at a certain rate upon each per cent. of dividend, the dividend being thus taken as the indicative of the value of the stock. No discrimination is made by either of the statutes as to the rate and manner of imposition of tax, but all the subjects are equally operated upon.

That this tax upon capital stock is a property tax is admitted by the plaintiff in error. (Plaintiff's brief, page 6.)

Such doctrine is held in *Commonwealth* v. *Standard Oil Co., 101 Penna., 119.* In that case a tax was sustained under the very taxing statutes here in question, upon capital stock of the Standard Oil Co., a corporation of the State of Ohio, doing business, and having capital employed in Pennsylvania, to the extent of the value of the capital invested and used in the course of its corporate business in the State. It was held in that case that the tax in question was not a franchise or license tax, but a tax merely upon the property of the company, that is, its capital stock to the extent that it brought its property within the borders of the State in the transaction of its business. The contention in that case related to the extent to which the capital stock of the company, represented by its property, was taxable. It was contended by the Commonwealth that doing business within the State rendered the company taxable upon the whole of the capital stock, but the court held, as above stated, that the capital stock could be taxed only to the extent that the property represented by it was brought within the State, and there employed in the transaction of its business. On page 145 the court declares, in so many words: "It has been repeatedly decided, and is settled law, that a tax upon the capital stock of a company is a tax

upon its property and assets," in support of which proposition a large number of cases are cited.

Similar doctrine is declared by the Supreme Court of Pennsylvania in its opinion in the present case, *Pullman's Palace Car Co.* v. *Commonwealth*, *11 Outerbridge*, *156*.

The tax in question is similar to that imposed in *Western Union Telegraph Company* v. *Massachusetts*, *supra*, which on p. 547, is thus defined by Mr. Justice Miller:

> By whatever name it may be called, as described in the laws of Massachusetts, it is essentially an excise upon the capital of the corporation. The laws of the Commonwealth attempt to ascertain the just amount which any corporation engaged in business within its limits shall pay as a contribution to the support of its government upon the amount and value of the capital so empoyed by it therein.

And again, p. 553.

> The tax in the present case, though nominally upon the shares of the capital stock of the company, is in effect a tax upon that organization on account of property owned and used by it in the State of Massachusetts.

It must be conceded, therefore, in view of the foregoing, that the capital stock of Pullman's Palace Car Co. actually within the State of Pennsylvania, through the employment of tangible property in the conduct of the business of the company in that State, is lawfully subject to taxation, even though the business may be the transaction of inter-state commerce. The tax, being a property tax, equally imposed upon the *ad valorem* basis, is, in its nature, a lawful tax, and none of the property upon which, by the terms of the statute, it is operative, is exempted by reason of its employment in the operations of inter-state commerce.

III.

IF, THEREFORE, THE TAX IS IN ITS NATURE A LAWFUL TAX, AND THE PROPERTY SUBJECTED TO IT IS NOT PROTECTED FROM ITS OPERATION BY REASON OF ITS EMPLOYMENT IN THE OPERATIONS OF INTER-STATE COMMERCE, THE QUESTION OF SITUS IS NOT A FEDERAL QUESTION.

This Court has never determined the *situs* of tangible

property as a Federal question, that is to say, it has never, upon a writ of error to the highest State court, adjudged upon the merits of a contention, where it was alleged upon one side and denied upon the other that tangible property was within the territorial taxing jurisdiction of the State, where the tax was conceded to be lawful in its nature, and the property not exempted by reason of its nature and use.

Said Harlan, J., speaking for the court in *Kirtland* v. *Hotchkiss*, *100 U. S.*, *491*, *498:*

"It may therefore be regarded as the established doctrine of this court that so long as the State, by its laws prescribing the mode and subjects of taxation, does not entrench upon the legitimate authority of the Union, or violate any right recognized or secured by the Constitution of the United States, this court, as between the State and its citizens, can afford him no relief against State taxation, however unjust, oppressive or onerous."

There is no provision in the Constitution or laws of the United States that can be invoked to prevent a State from taxing any tangible property on the ground that it is not within its jurisdiction. So long as a State does not entrench on the Constitution of the United States, it may tax anything within its reach, anything it can lay its hands on and subject to its power, and in this particular it is as far removed from the Federal jurisdiction as a foreign country. If the owner of property employed in the operations of inter-state commerce, and which may be lawfully subjected to a proper tax, has a right, merely because of the use to which the property is put, to question in this court the rightfulness of the levy of the tax upon a given piece of property, he may, upon the same ground, invoke the jurisdiction of the Federal Court to vindicate all his rights with reference to such property. He may thus, for example, without regard to other jurisdictional requirements, replevy it by Federal process, from alleged unlawful seizure and thereby bring in review the jurisdiction of the State court to subject it to judgment, or take it in execution, or he may, by writ of error to the highest State court, present the question of jurisdiction over such property in a proceeding *in rem*, where there has been an actual seizure.

In *Erie Railway Co.* v. *Pennsylvania*, *21 Wallace*, *492*, which was upon a writ of error to the Supreme Court of Pennsylvania, Mr. Justice Hunt, speaking for the Court (p. 497) said:

First. The Supreme Court of that State has held that this company was doing business in the State in the sense of the act [the act of 1868 imposing a tax upon the gross receipts of transportation companies]. This construction of a State statute by the Supreme Court of a State, involving no question under the laws or Constitution of the United States, is conclusive upon us. We accept the construction of State statutes by the State courts, although we may doubt the correctness of such construction. We accept and adopt it, although we may have already accepted and adopted a different construction of a similar statute of another State in deference to the Supreme Court of that State.

And again (p. 498) he said:

If it [the State] intended to impose the tax and had the power to do it, the extent and the proportion to which it is carried, belongs to the judgment and discretion of the State only; it is beyond our examination.

In the case of *Delaware Railroad Tax*, *18 Wallace*, *206*, which came before this court on a writ of error to the Circuit Court of the United States for the district of Delaware, and in which a tax was claimed upon the net earnings of the Philadelphia, Wilmington and Baltimore Railroad Company in the proportion which the length of the road within the limits of the State of Delaware bore to the whole length of the road, and also a tax upon such number of the shares of its capital stock as would be in that proportion to the whole number of shares which the length of the road within the State bore to the whole length of the road, and in which the validity of both these taxes was affirmed by this Court.

Mr. Justice Field, speaking for the Court (p. 231), said:

The State may impose taxes upon the corporation as an entity existing under its laws, as well as upon the capital stock of the corporation or its separate corporate property, and the manner in which its value shall be assessed, and the rate of taxation, however arbitrary or capricious, are mere matters of legislatative discretion. It is not for us to suggest in any case that a more equitable mode of assess-

ment or rate of taxation might be adopted than the one prescribed by the Legislature of the State. Our only concern is with the validity of the tax All else lies beyond the domain of our jurisdiction.

IV.

THE PROPERTY REPRESENTED BY THE CAPITAL STOCK, UPON WHICH THE TAX IN QUESTION IS IMPOSED, HAS A SITUS WITHIN THE TAXING JURISDICTION OF PENNSYLVANIA.

The plaintiff in error is incorporated for, and the nature of its principal business is, the doing of what it does in Pennsylvania, to wit, the operating of various lines of its palace cars. These are continuously and permanently operated, and have been during all the period for which the tax in controversy in this case is claimed.

While in the jurisprudence of the United States a corporation is regarded as in effect a citizen of the State which has created it, and while it has no faculty to emigrate, it can yet exercise its franchises extra-territorially so far as may be permitted by the policy or comity of other sovereigns. By the consent, express or implied, of the local government, it may transact, within its boundaries, any business not *ultra vires*, and like a natural person may have a special or constructive residence so as to be charged with taxes and duties or be subjected to special jurisdiction. It is for the local sovereign to prescribe the terms and conditions upon which its presence by its agents and the conducting of its affairs may be permitted.

St. Louis v. *Ferry Co.*, *11 Wall.*, *423.*

Pullman's Palace Car company is exercising its franchises through the presence of its property and agents in Pennsylvania, and is there doing the business for which it was incorporated, subjected to no terms or conditions upon which its presence is permitted, but burdened with taxation upon its capital stock to the extent of the property there employed, in like manner as the capital stock of domestic or other corporations, employed in similar or other business, is burdened.

The doctrine that personal property has no local *situs* separate from the domicil of the owner, and follows his person, is a legal fiction. This fiction cannot be interposed

against the sovereign power of the State to tax the personal property of absent or non-resident owners actually within the State, if the same character of property will be taxable in the hands of a resident owner.

Welty on Assessments, Section 43.

Judge Story says of this legal fiction that it "yields, whenever it is necessary for the purposes of justice that the actual *situs* of the thing should be examined. A nation within whose territory any personal property is actually situate has an entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate there.

Story on Conflict of Laws, Section 550.

This case does not present a case of taxation of property *in transitu*, nor does it present any question as to the *situs* of rolling stock of railways, as such questions are ordinarily presented. The property represented by the capital stock taxed is not moved for the purpose of consummating a single transaction, nor transported for the mere purpose of changing its place from one situation to another, but is continuously and permanently employed in going to and fro upon certain routes of travel as the means of carrying on an established and permanent business. The lines of Pullman's Palace Car Company are as permanent, in legal contemplation, having regard to the kind of business in which they are engaged, as the lines of railroad upon which they run. They are as permanent as pipe lines for the transportation of oil, or as telegraph lines for the transportation of messages.

This case is like that of *Pullman's Palace Car Co.* v. *Twombley*, decided by the Circuit Court of the United States for the Southern district of Iowa, *29 Federal Reporter, 658.* In that case it appeared that by a statute of Iowa a tax was imposed upon sleeping and dining cars according to the average number of cars used, and in the proportion to the entire value of the cars that the monthly average number of miles that such cars were run and operated within the State bore to the average number of miles that such cars were used and operated within and without the State, and that such valuation was in the same ratio as

the property of individuals. It was held in that case that vehicles of transportation, used constantly and continuously upon a single run, acquire a *situs* for purposes of taxation independent and irrespective of the domicil of the owner.

The remark of Brewer J., in that case is pertinent here:

"It will be noticed that, in order to be perfectly fair and just, where any rolling stock is used partly in and partly out of the State, only that proportion of value based upon the amount of use within the State is considered as the basis of taxation. In other words, the State aims to tax that property which it protects, and only to the extent that it furnishes protection. If it cannot do this, it requires but a moment's reflection to see that the State will be shorn of very much of what every candid man must feel to be an honest revenue. Sleeping cars are not the only vehicles used in inter-state commerce. A vast amount of rolling stock used on the various inter-state railroads belongs to car trust companies, and is simply leased by the railroad companies. Is it taxable only in the eastern cities in which the car trust companies are domiciled? More than that, how many inter state railroads, traversing often several States are owned and operated by a corporation domiciled in a single State? Has that State alone the power of taxation?

He makes use of this illustration:

"A citizen of Canada, with his only domicil there, may build in the city of Des Moines a sleeping car. It remains idle and unused. The duty of the State to protect that property for its owner is clear, and equally clear its correlative right to subject it to ordinary taxation. To provide protection, costs money, and the tax is the owner's proper payment therefor. The car may be employed in commerce and run continously from Davenport to Council Bluffs. The duty of protection and the right of taxation confessedly remains unchanged. Next year it extends its run across the Mississippi river to Rock Island. The duty of protection remains. Has the right of taxation gone? Must both Iowa and Illinois pay for furnishing the citizen of Canada protection to his property, and neither have any right to exact any compensation therefor?"

Said Miller, J., in *State Railroad Tax Cases, 92 U. S., 575, 607:*

Another objection to the system of taxation by the State is, that the rolling stock, capital stock, and franchise are personal property, and that this, with all other personal

property, has a local *situs* at the principal place of business of the corporation, and can be taxed by no other county, city or town, but the one where it is so situated.

This objection is based upon the general rule of law that personal property, as to its *situs*, follows the domicil of its owner. It may be doubted very reasonably whether such a rule can be applied to a railroad corporation as between the different localities embraced by its line of road. But, after all, the rule is merely the law of the State which recognizes it; and when it is called into operation as to property located in one State, and owned by a resident of another, it is a rule of comity in the former State rather than an absolute principle in all cases. *Green* v. *Van Buskirk*, 5 Wall, 312. Like all other laws of a State, it is, therefore, subject to legislative repeal, modification, or limitation; and when the Legislature of Illinois declared that it should not prevail in assessing personal property of railroad companies for taxation, it simply exercised an ordinary function of legislation.

V.

The apportionment of the value of the property is made upon a just and approved principle.

This principle is that where any line of transportation is extended in the operation of its business through different States, the line is taxable in a given state in the proportion that the length of the line in that State bears to the total length of lines operated. This principle is known as apportionment upon the mileage basis.

The system of apportionment of taxes in Pennsylvania is based wholly upon the practice of the accounting department and the course of judicial decision in that State, and has prevailed for upwards of forty years. Of this system it was said by the late Judge Pearson, the venerable President Judge of the Court of Common Pleas of Dauphin county, in which Court most of the tax cases of the Commonwealth have been tried, and than whom no one was more familiar with the tax laws and decisions of the Commonwealth:

It has been the uniform practice in this State to compute

the tax on improvements of almost every kind extending from this into other States according to the distance located in each State. This is done on capital stock, gross receipts, money at interest, and almost every tax to which our corporations are subject, except on tonnage where a different rule is prescribed. The principle was laid down in 9th Barr, 416, was followed in the Trenton Delaware Bridge Co., reported in Law Register. Vol. 9, O. S., page 298, has been repeated since in many other cases in this Court, and confirmed by the Supreme Court. See Commonwealth v. Pittsburgh, Fort Wayne and Chicago Railroad Co.; The Delaware, Lackawanna and Western Railroad Co.; The Buffalo and Erie Railroad, and many others. The question must be considered settled.

Commonwealth v. *Northern Central R. R. Co., Legal opinion, April 13, 1872, Vol. 2, No. 24.*

It is considered unnecessary to burden this brief with a citation of the long list of cases in Pennsylvania upon this subject.

The principle was recognized in this Court in *State Railroad Tax Case, 92 U. S. 576, 611*, where Mr. Justice Miller, speaking for the Court, said:

"This Court has expressly held in two cases where the road of a corporation ran through different States, that a tax upon the income or franchise of the road was properly apportioned by taking the whole income or value of the franchise and the length of the road in each State as the basis of taxation." Citing the *Delaware Railroad Tax Case, 18 Wall., 208; Erie R. R. Co.* v. *Pennsylvania, 21 Wall., 402.*

It is recognized in *Telegraph Company* v. *Massachusetts, supra.*

Miller, J., said, on page 552:

The tax in the present case, though nominally upon the shares of the capital stock of the company, is in effect a tax upon that organization on account of property owned and used by it in the State of Massachusetts, and the proportion of the length of its lines in that State to their entire length throughout the whole country is made the basis for ascertaining the value of that property. We do not think that such a tax is forbidden by the acceptance on the part of the telegraph company of the rights conferred by section 5263

of the Revised Statutes, or by the commerce clause of the Constitution.

It is urged against this tax that in ascertaining the value of the stock no deduction is made on account of the value of real estate and machinery situated and subject to local taxation outside of the Commonwealth of Massachusetts. The report of Examiner Fiske, to whom the matter was referred to find the facts, states that the amount of the value of said real estate outside of its jurisdiction was not clearly shown, but it did appear that the cost of land and buildings belonging to the company and entirely without that State was over three millions of dollars. In the statement of the treasurer of the company it is said that the value of real estate owned by the company within the State of Massachusetts was nothing. Since the corporation was only taxed for that proportion of its shares of capital stock which was supposed to be taxable in that State on the calculation above referred to, and since no real estate of the corporation was owned or taxed within its limits, we do not see why any deduction should be made from the proportion of the capital stock which is taxed by its authorities. But if this were otherwise we do not feel called upon to defend all the items and rules by which they arrived at the taxable value on which its ratio of percentage of taxation should be assessed; and even in this case, which comes from the Circuit Court and not from that of the State, we think it should appear that the corporation is injured by some principle or rule of the law not equally applicable to other objects of taxation of like character. Since, therefore, this statute of Massachusetts is intended to govern the taxation of all corporations therein, and doing business within its territory, whether organized under its own laws or those of some other State, and since the principle is one which we cannot pronounce to be an unfair or an unjust one, we do not feel called upon to hold the tax void, because we might have adopted a different system had we been called upon to accomplish the same result.

It is very clear to us, when we consider the limited territorial extent of Massachusetts, and the proportion of the length of the lines of this company in that State to its business done therein, with its great population and business activity, that the rule adopted to ascertain the amount of the value of the capital engaged in that business within its boundaries, on which the tax should be assessed, is not unfavorable to the corporation, and that the details of the method by which this was determined have not exceeded

the fair range of legislative discretion. We do not think that it follows necessarily, or as a fair argument from the facts stated in the case, that there was injustice in the assessment for taxation.

JOHN F. SANDERSON,
Deputy Attorney General.
W. S. KIRKPATRICK,
Attorney General.

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 6.

Pullman's Palace Car Company,

Plaintiff in Error,

vs.

The Commonwealth of Pennsylvania,

Defendant in Error.

Error to Supreme Court of Pennsylvania.

TAX ON CAPITAL STOCK.

Defendant's Brief and Supplemental Brief on Re-Argument.

JOHN F. SANDERSON,
Deputy Attorney General.

W. S. KIRKPATRICK,
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In the Supreme Court of the United St

OCTOBER TERM, 1889, No. 6.

PULLMAN'S PALACE CAR COMPANY,
Defendant in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA,
Defendant in Error.

ERROR TO SUPREME COURT OF PENNSYLVANIA.

TAX ON CAPITAL STOCK.

ARGUMENT FOR DEFENDANT IN ERROR.

Pullman's Palace Car Company is a corporation of the State of Illinois, having its principal office in Chicago. Its corporate business, during all the time for which the tax in question is charged, was to furnish sleeping coaches and parlor and dining-room cars to various railroads, with which it contracted on the following terms:

The company furnished the coaches and cars, and the railroads attached them to and made them part of their trains, no charge being made by either party against the

other. The railroad companies collected the usual fare from passengers who traveled in their coaches and cars, and the company collected a separate charge for the use of the seats, sleeping berths, and other conveniences. The cars were run continuously upon certain lines of travel, some of which were entirely within the State of Pennsylvania, but most were lines of travel extending from without into, or from within out of, or through the State of Pennsylvania. Persons traveling from point to point within the State were taken up and put down upon the lines running interstate. Business has been carried on continuously in this way in Pennsylvania since February 17, 1870, and during the period covered by the tax in question, to wit, up to and including the year 1880.

The tax in question was imposed under successive acts of Assembly, similar in character, of 1868, 1874, 1877, and 1879, the material portions of which are set forth at length in plaintiff's brief, pages 2, 3, 4 and 5. These acts provide for the taxation of the capital stock of all companies existing by the law of the State, or lawfully doing business therein, with certain exceptions, and by these acts the capital stock of all such companies, so existing, or doing business, are taxed at the same rate and in substantially the same manner.

I.

IT IS COMPETENT FOR A STATE TO TAX UPON AN AD VALOREM BASIS PROPERTY EMPLOYED IN THE OPERATIONS OF INTER-STATE COMMERCE, IN LIKE MANNER AND AT EQUAL RATES WITH OTHER PROPERTY.

Most cases in this court, wherein the subject of regulation of commerce among the several States has been discussed, with reference to taxation, and wherein various taxing statutes have been declared inoperative as to the business of interstate commerce, have expressly excepted from the ban of the Constitution property taxes.

Thus Chief Justice Waite, speaking for the Court, in *Telegraph Company* v. *Texas, 105 U. S. 460, 464,* said:

"The Western Union Telegraph Company, having accepted the restrictions and obligations of this provision by Congress, occupies in Texas the position of an instrument of foreign and interstate commerce, and of the government agent for the transmission of messages on public business. Its property in the State is subject to taxation the same as other property, and it may undoubtedly be taxed in a proper way on account of its occupation and its business. The precise question now presented is whether the power to tax its occupation can be exercised by placing a specific tax on each message sent out of the State, or sent by public officers on the business of the United States.

Thus Miller, J., speaking for the court in *Western Union Telegraph Co.* v. *Massachusetts, 125 U. S. 530, 540,* referring to the case above cited, as it applied to the case then under discussion, said:

"This authority of the government gives to this telegraph company, as well as to all others of a similar character who accept its provisions, the right to run their lines over the roads and bridges which have been declared to be post roads of the United States If the principle now contended for be sound, every railroad in the country should be exempt from taxation because they have all been declared to be post roads; and the same reasoning would apply with equal force to every bridge and navigable stream throughout the land. And if they were not exempt from the burden of taxation simply because they were post roads, they would be so relieved whenever a telegraph company chose to make use of one of these roads or bridges along or over which to run its lines. It was to provide against the recognition of such a principle that this court, in the case above cited, while holding that telegrams themselves coming from without a State or sent out of it as a part of their conveyance could not be taxed by the State specifically, nevertheless used the language that 'its property in the State is subject to taxation the same as other property, and it may undoubtedly be taxed in a proper way on account of its occupation and its business.'"

And again, p. 548:

While the State could not interfere by any specific statute

to prevent a corporation from placing its lines along these post-roads, or stop the use of them after they were placed there, nevertheless the company receiving the benefit of the laws of the State for the protection of its property and its rights is liable to be taxed on its real or personal property as any other person would be.

Thus Bradley, J., speaking for the Court in *Leloup* v. *Port of Mobile, 127 U. S., 640, 649*, said:

We may here repeat what we have so often said before, that this exemption of interstate and foreign commerce from State regulation does not prevent the State from taxing the property of those engaged in such commerce, located within the State, as the property of other citizens is taxed, nor from regulating matters of local concern, which may incidentally affect commerce, such as wharfage, pilotage and the like.

These are the most recent statements of this court upon that subject, and they are supported by decided cases directly in point, to which it is unnecessary to refer.

II.

THE TAX IN QUESTION IS A TAX UPON PROPERTY LEVIED UPON AN AD VALOREM BASIS, IN LIKE MANNER AND AT EQUAL RATES UPON ALL THE SUBJECTS UPON WHICH IT IS IMPOSED.

The act of 1868 applied to the capital stock of all companies existing under any law of the State or incorporated by any other State, and lawfully doing business in Pennsylvania, except banks, saving institutions and foreign insurance companies, and, under certain conditions, building societies, plank roads or turnpike companies.

The act of 1874 applied to all companies existing under any law of the State, or incorporated by any other State, and doing business in the State, which were in any way engaged in the transportation of freight or passengers.

The act of 1877 applied to all companies or associations existing under any law of the State, or incorporated by any

other State or country, and doing business in the State, except building associations, banks, savings institutions and foreign insurance companies.

The act of 1879 applies to every company or association existing under any law of the State or any law of any other State, territory or foreign government, and doing business in the State, or having capital employed therein in the name of any other company or corporations, association or associations, person or persons, or in any other manner, excepting foreign insurance companies, banks and savings institutions.

Each of the statutes cited imposes the tax upon the value of the capital stock. When no dividend is declared the value is ascertained by appraisement. When a dividend is declared, then the tax is at a certain rate upon each per cent. of dividend, the dividend being thus taken as the indicative of the value of the stock. No discrimination is made by either of the statutes as to the rate and manner of imposition of tax, but all the subjects are equally operated upon.

That this tax upon capital stock is a property tax is admitted by the plaintiff in error. (Plaintiff's brief, page 6.)

Such doctrine is held in *Commonwealth* v. *Standard Oil Co., 101 Penna., 119.* In that case a tax was sustained under the very taxing statutes here in question, upon capital stock of the Standard Oil Co., a corporation of the State of Ohio, doing business, and having capital employed in Pennsylvania, to the extent of the value of the capital invested and used in the course of its corporate business in the State. It was held in that case that the tax in question was not a franchise or license tax, but a tax merely upon the property of the company, that is, its capital stock to the extent that it brought its property within the borders of the State in the transaction of its business. The contention in that case related to the extent to which the capital stock of the company, represented by its property, was taxable. It was contended by the Commonwealth that doing business within

the State rendered the company taxable upon the whole of the capital stock, but the court held, as above stated, that the capital stock could be taxed only to the extent that the property represented by it was brought within the State and there employed in the tranaction of its business. On page 145 the court declares in so many words: "It has been repeatedly decided, and is settled law, that a tax upon the capital stock of a company is a tax upon its property and assets," in support of which proposition a large number of cases are cited.

Similar doctrine is declared by the Supreme Court of Pennsylvania in its opinion in the present case, *Pullman's Palace Car Co.* v. *Commonwealth, 11 Outerbridge, 156.*

The tax in question is similar to that imposed in *Western Union Telegraph Company* v. *Massachusetts, supra,* which on p. 547, is thus defined by Mr. Justice Miller:

> By whatever name it may be called, as described in the laws of Massachusetts, it is essentially an excise upon the capital of the corporation. The laws of the Commonwealth attempt to ascertain the just amount which any corporation engaged in business within its limits shall pay as a contribution to the support of its government upon the amount and value of the capital so employed by it therein.

And again, p. 553;

> The tax in present case, though nominally upon the shares of the capital stock of the company, is in effect a tax upon that organization on account of property owned and used by it in the State of Massachusetts.

It must be conceded, therefore, in view of the foregoing, that the capital stock of Pullman's Palace Car Co. actually within the State of Pennsylvania, through the employment of tangible property in the conduct of the business of the company in that State, is lawfully subject to taxation, even though the business may be the transaction of interstate commerce. The tax, being a property tax, equally imposed

upon the *ad valorem* basis, is, in its nature, a lawful tax, and none of the property upon which, by the terms of the statute, it is operative, is exempted by reason of its employment in the operations of interstate commerce.

III.

IF, THEREFORE, THE TAX IS IN ITS NATURE A LAWFUL TAX, AND THE PROPERTY SUBJECTED TO IT IS NOT PROTECTED FROM ITS OPERATION BY REASON OF ITS EMPLOYMENT IN THE OPERATIONS OF INTER-STATE COMMERCE, THE QUESTION OF SITUS IS NOT A FEDERAL QUESTION.

This Court has never determined the *situs* of tangible property as a Federal question, that is to say, it has never upon a writ of error to the highest State court, adjudged upon the merits of a contention, where it was alleged upon one side and denied upon the other that tangible property was within the territorial taxing jurisdiction of the State, where the tax was conceded to be lawful in its nature, and the property not exempted by reason of its nature and use.

Said Harlan, J., speaking for the court in *Kirtland* v. *Hotchkiss, 100 U. S., 491; 498:*

"It may therefore be regarded as the established doctrine of this court that so long as the State, by its laws prescribing the mode and subjects of taxation, does not entrench upon the legitimate authority of the Union, or violate any right recognized or secured by the Constitution of the United States, this court, as between the State and its citizens, can afford him no relief against State taxation, however unjust, oppressive or onerous."

There is no provision in the Constitution or laws of the United States that can be invoked to prevent a State from taxing any tangible property on the ground that it is not within its jurisdiction. So long as a State does not entrench on the Constitution of the United States, it may tax anything within its reach, anything it can lay its hands on and subject to its power, and in this particular it is as far removed

from the Federal jurisdiction as a foreign country. If the owner of property employed in the operations of inter-state commerce, and which may be lawfully subjected to a proper tax, has a right, merely because of the use to which the property is put, to question in this court the rightfulness of the levy of the tax upon a given piece of property, he may, upon the same ground, invoke the jurisdiction of the Federal Court to vindicate all his rights with reference to such property. He may thus, for example, without regard to other jurisdictional requirements, replevy it by Federal process, from alleged unlawful seizure and thereby bring in review the jurisdiction of the State court to subject it to judgment, or take it in execution, or he may, by writ of error to the highest State court, present the question of jurisdiction over such property in a proceeding *in rem*, where there has been an actual seizure.

In *Erie Railway Co.* v. *Pennsylvania, 21 Wallace, 492,* which was upon a writ of error to the Supreme Court of Pennsylvania, Mr. Justice Hunt, speaking for the Court (p. 497) said:

First. The Supreme Court of that State has held that this company was doing business in the State in the sense of the act [the act of 1868 imposing a tax upon the gross receipts of transportation companies.] This construction of a State statute by the Supreme Court of a State, involving no question under the laws or Constitution of the United States, is conclusive upon us. We accept the construction of the State statutes by the State courts, although we may doubt the correctness of such construction. We accept and adopt it, although we may have already accepted and adopted a different construction of a similar statute of another State in deference to the Supreme Court of that State.

And again (p. 498) he said:

If it [the State] intended to impose the tax and had the power to do it, the extent and the proportion to which it is carried, belongs to the judgment and discretion of the State only; it is beyond our examination.

In the case of *Delaware Railroad Tax, 18, Wallace, 206*, which came before this court on a writ of error to the Circuit Court of the United States for the district of Delaware, and in which a tax was claimed upon the net earnings of the Philadelphia, Wilmington and Baltimore Railroad Company in the proportion which the length of the road within the limits of the State of Delaware bore to the whole length of the road, and also a tax upon such number of the shares of its capital stock as would be in that proportion to the whole number of shares which the length of the road within the State bore to the whole length of the road, and in which the validity of both these taxes was affirmed by this Court.

Mr. Justice Field, speaking for the Court, (p. 231,) said:

> The State may impose taxes upon the corporation as an entity existing under its laws, as well as upon the capital stock of the corporation or its separate corporate property, and the manner in which its value shall be assessed, and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion. It is not for us to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than the one prescribed by the Legislature of the State. Our only concern is with the validity of the tax. All else lies beyond the domain of our jurisdiction.

IV.

THE PROPERTY REPRESENTED BY THE CAPITAL STOCK, UPON WHICH THE TAX IN QUESTION IS IMPOSED, HAS A SITUS WITHIN THE TAXING JURISDICTION OF PENNSYLVANIA.

The plaintiff in error is incorporated for, and the nature of its principal business is, the doing of what it does in Pennsylvania, to wit, the operating of various lines of its palace cars. These are continuously and permanently operated, and have been during all the period for which the tax in controversy in this case is claimed.

While in the jurisprudence of the United States a corporation is regarded as in effect a citizen of the State which has

created it, and while it has no faculty to emigrate, it can yet exercise its franchises extra-territorially so far as may be permitted by the policy or comity of other sovereigns. By the consent, express or implied, of the local government, it may transact, within its boundaries, any business not *ultra vires*, and like a natural person may have a special or constructive residence so as to be charged with taxes and duties or be subjected to special jurisdiction. It is for the local sovereign to prescribe the terms and conditions upon which its presence by its agents and the conducting of its affairs may be permitted.

St Louis v. *Ferry Co., 11 Wall, 423.*

Pullman's Palace Car Company is excercising its franchises through the presence of its property and agents in Pennsylvania, and is there doing the business for which it was incorporated, subjected to no terms or conditions upon which its presence is permitted, but burdened with taxation upon its capital stock to the extent of the property there employed, in like manner as the capital stock of domestic or other corporations, employed in similar or other business, is burdened.

The doctrine that personal property has no local *situs* separate from the domicile of the owner, and follows his person, is a legal fiction. This fiction cannot be interposed against the sovereign power of the State to tax the personal property or absent or non-resident owners actually within the State, if the same character of property will be taxable in the hands of a resident owner.

Welty on Assessments, Section 43.

Judge Story says of this legal fiction that it "yields, whenever it is necessary for the purposes of justice that the actual *situs* of the thing should be examined. A nation within whose territory any personal property is actually situate has an entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate there.

Story on Conflict of Laws, Section 550.

This case does not present a case of taxation of property *in transitu*, nor does it present any question as to the *situs* of rolling stock of railways, as such questions are ordinarily presented. The property represented by the capital stock taxed is not moved for the purpose of consummating a single transaction, nor transported for the mere purpose of changing its place from one situation to another, but is continuously and permanently employed in going to and fro upon certain routes of travel as the means of carrying on an established and permanent business. The lines of Pullman's Palace Car Company are as permanent, in legal contemplation, having regard to the kind of business in which they are engaged, as the lines of railroad upon which they run. They are as permanent as pipe lines for the transportation of oil, or as telegraph lines for the transportation of messages.

This case is like that of *Pullman's Palace Car Co.* v. *Twombley*, decided by the Circuit Court of the United States for the Southern district of Iowa, *29 Federal Reporter, 658*. In that case it appeared that by a statute of Iowa a tax was imposed upon sleeping and dining cars according to the average number of cars used, and in the proportion to the entire value of the cars that the monthly average number of miles that such cars were run and operated within the State bore to the average number of miles that such cars were used and operated within and without the State, and that such valuation was in the same ratio as the property of individuals. It was held in that case that vehicles of transportation, used constantly and continuously upon a single run, acquire a *situs* for purposes of taxation independent and irrespective of the domicil of the owner.

The remark of Brewer, J., in that case is pertinent here:

"It will be noticed that, in order to be perfectly fair and just, where any rolling stock is used partly in and partly out of the State, only that proportion of value based upon the amount of use within the State is considered as the basis of

taxation. In other words, the State aims to tax that property which it protects, and only to the extent that it furnishes protection. If it cannot do this, it requires but a moment's reflection to see that the State will be shorn of very much of what every candid man must feel to be an honest revenue. Sleeping cars are not the only vehicles used in inter-state commerce. A vast amount of rolling stock used on the various inter-state railroads belongs to car trust companies, and is simply leased by the railroad companies. Is it taxable only in the eastern cities in which the car trust companies are domiciled? More than that, how many inter-state railroads, traversing often several States are owned and operated by a corporation domiciled in a single State? Has that State alone the power of taxation?

He makes use of this illustration:

"A citizen of Canada, with his only domicil there, may build in the city of Des Moines a sleeping car. It remains idle and unused. The duty of the State to protect that property for its owner is clear, and equally clear its correlative right to subject it to ordinary taxation. To provide protection, costs money, and the tax is the owner's proper payment therefor. The car may be employed in commerce and run continuously from Davenport to Council Bluffs. The duty of protection and the right of taxation confessedly remains unchanged. Next year it extends its run across the Mississippi river to Rock Island. The duty of protection remains. Has the right of taxation gone? Must both Iowa and Illinois pay for furnishing the citizen of Canada protection to his property, and neither have any right to exact any compensation therefor?"

Said Miller, J., in *State Railroad Tax Cases, 92 U. S., 575, 607:*

Another objection to the system of taxation by the State is, that the rolling stock, capital stock, and franchise are personal property, and that this, with all other personal property, has a local *situs* at the principal place of business of the corporation, and can be taxed by no other county, city or town, but the one where it is so situated.

This objection is based upon the general rule of law that personal property, as to its *situs*, follows the domicil of its

owner. It may be doubted very reasonably whether such a rule can be applied to a railroad corporation as between the different localities embraced by its line of road. But, after all, the rule is merely the law of the State which recognises it; and when it is called into operation as to property located in one State, and owned by a resident of another, it is a rule of comity in the former State rather than an absolute principle in all cases. *Green* v. *Van Buskirk, 5 Wall, 319.* Like all other laws of a State, it is, therefore, subject to legislative repeal, modification, or limitation; and when the Legislature of Illinois declared that it should not prevail in assessing personal property of railroad companies for taxation, it simply exercised an ordinary function of legislation.

V.

THE APPORTIONMENT OF THE VALUE OF THE PROPERTY IS MADE UPON A JUST AND APPROVED PRINCIPLE.

This principle is that where any line of transportation is extended in the operation of its business through different States, the line is taxable in a given State in the proportion that the length of the line in that State bears to the total length of lines operated. This principle is known as apportionment upon the mileage basis.

The system of apportionment of taxes in Pennsylvania is based wholly upon the practice of the accounting department and the course of judicial decision in that State, and has prevailed for upwards of forty years. Of this system it was said by the late Judge Pearson, the venerable President Judge of the Court of Common Pleas of Dauphin county, in which court most of the tax cases of the Commonwealth have been tried, and than whom no one was more familiar with the tax laws and decisions of the Commonwealth:

It has been the uniform practice in this State to compute the tax on improvements of almost every kind extending from this into other States according to the distance located in each State. This is done on capital stock, gross receipts, money at interest, and almost every tax to which our cor-

porations are subject, except on tonnage where a different rule is prescribed. The principle was laid down in 9th Barr, 416, was followed in the Trenton Delaware Bridge Co., reported in Law Register, Vol. 9, O. S., page 298, has been repeated since in many other cases in this court, and confirmed by the Supreme Court. See Commonwealth *v.* Pittsburg, Fort Wayne and Chicago Railroad Co.; The Delaware, Lackawanna and Western Railroad Co.; The Buffalo and Erie Railroad, and many others. The question must be considered settled.

Commonwealth v. *Northern Central R. R. Co., Legal opinion, April 13, 1872, Vol. 2, No. 24.*

It is considered unnecessary to burden this brief with a citation of the long list of cases in Pennsylvania upon this subject.

The principle was recognized in this Court in *State Railroad Tax Case, 92 U. S. 576, 611,* where Mr. Justice Miller, speaking for the Court, said:

"This Court has expressly held in two cases where the road of a corporation ran through different States, that a tax upon the income or franchise of the road was properly apportioned by taking the whole income or value of the franchise and the length of the road in each State as the basis of taxation." Citing the *Delaware Railroad Tax Case, 18 Wall., 208; Erie R. R. Co.* v. *Pennsylvania, 21 Wall., 402.*

It is recognized in *Telegraph Company* v. *Massachusetts, supra.*

Miller, J., said, on page 552:

The tax in the present case, though nominally upon the shares of the capital stock of the company, is in effect a tax upon that organization on account of property owned and used by it in the State of Massachusetts, and the proportion of the length of its lines in that State to their entire length throughout the whole country is made the basis for ascertaining the value of that property. We do not think that such a tax is forbidden by the acceptance on the part of the telegraph company of the rights conferred by section 5263 of the Revised Statutes, or by the commerce clause of the Constitution.

It is urged against this tax that in ascertaining the value of the stock no deduction is made on account of the value of real estate and machinery situated and subject to local taxation outside of the Commonwealth of Massachusetts. The report of Examiner Fiske, to whom the matter was referred to find the facts, states that the amount of the value of said real estate outside of its jurisdiction was not clearly shown, but it did appear that the cost of land and buildings belonging to the company and entirely without that State was over three millions of dollars. In the statement of the treasurer of the company it is said that the value of real estate owned by the company within the State of Massachusetts was nothing. Since the corporation was only taxed for that proportion of its shares of capital stock which was supposed to be taxable in that State on the calculation above referred to, and since no real estate of the corporation was owned or taxed within its limits, we do not see why any deduction should be made from the proportion of the capital stock which is taxed by its authorities. But if this were otherwise we do not feel called upon to defend all the items and rules by which they arrived at the taxable value on which its ratio of percentage of taxation should be assessed; and even in this case. which comes from the Circuit Court and not from that of the State, we think it should appear that the corporation is injured by some principle or rule of the law not equally applicable to other objects of taxation of like character. Since, therefore, this statute of Massachusetts is intended to govern the taxation of all corporations therein, and doing business within its territory, whether organized under its own laws or those of some other State, and since the principle is one which we cannot pronounce to be an unfair or an unjust one, we do not feel called upon to hold the tax void, because we might have adopted a different system had we been called upon to accomplish the same result.

It is very clear to us, when we consider the limited territorial extent of Massachusetts, and the proportion of the length of the lines of this company in that State to its business done therein, with its great population and business activity, that the rule adopted to ascertain the amount of the value of the capital engaged in that business within its boundaries, on which the tax should be assessed, is not unfavorable to the corporation, and that the details of the

method by which this was determined have not exceeded the fair range of legislative discretion. We do not think that it follows necessarily, or as a fair argument from the facts stated in the case, that there was injustice in the assessment for taxation.

JOHN F. SANDERSON,
Deputy Attorney General.
W. S. KIRKPATRICK,
Attorney General.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

The propositions submitted upon the first argument of this case were the following:

1. It is competent for a State to tax, upon an *ad valorem* basis, property employed in the operations of inter-State commerce in like manner and at equal rates with other property.

2. The tax in question is a tax upon property levied upon an *ad valorem* bases in like manner and at equal rates upon all subjects upon which it is imposed.

3. If the tax is in its nature a lawful tax, and the property subjected to it is not protected from its operation by reason of its employment in the operations of inter-State commerce, the question of *situs* is not a federal question.

4. The property represented by the capital stock, upon which the tax in question is imposed, has a *situs* within the taxing jurisdiction of Pennsylvania.

5. The apportionment of the value of the property is made upon a just and approved principle, to wit: upon the mileage basis, that is to say, the length of lines in miles continuously and permanently run by the cars is taken as the dominator and the length of such lines run in Pennsylvania in miles is taken as the numerator of a fraction which measures the proportion of the value of the property taxed.

Upon the proposition that the property represented by the capital stock, upon which the tax in question is imposed, has a *situs* within the taxing jurisdiction of Pennsylvania, the following additional authority is submitted:

The case of *Marye* v. *Baltimore & Ohio R. R. Co.*, *127 U. S., 117*, was that of a bill in equity filed by the Baltimore & Ohio R. R. Co. against the taxing officers of the State of Virginia for the purpose of enjoining them from selling certain engines and cars for the payment of a tax alleged to have

been illegally assessed thereon. It appeared that the Baltimore & Ohio R. R. Co. was a corporation of the State of Maryland, whose rolling stock was exempt from taxation by that State; that the line of its roads did not at any point lie in the State of Virginia; that it connected with certain roads belonging to corporations of Virginia; and that during the period for which the taxes in question were levied, it had worked certain railroads in that State under leases or contracts under which it furnished and used its own rolling stock, none of which was assigned permanently to the lines in the State of Virginia, but which was used interchangeably upon the main lines and branches of the Baltimore & Ohio R. R. in the States of Maryland, Virginia, Pennsylvania, and States west of the Ohio river, as the necessities of the company's service required.

It was held, upon an appeal from a decree of the Circuit Court of the United States for the Western District of Virginia that the statutes of Virginia, relied upon by the taxing authorities, were not applicable to the Baltimore & Ohio R. R. Co. but were confined to corporations deriving their authority from the laws of Virginia; but in discussing the general question, Mr. Justice Matthews, speaking for the Court, said:

"It is not denied, as it cannot be, that the State of Virginia has rightful power to levy and collect a tax upon such property used and found within its territorial limits, as this property was used and found, if and whenever it may choose, by apt legislation, to exert its authority over the subject. It is quite true, as the *situs* of the Baltimore and Ohio Railroad Company is in the State of Maryland, that also, upon general principles, is the *situs* of all its personal property; but for purposes of taxation, as well as for other purposes, that *situs* may be fixed in whatever locality the property may be brought and used by its owner by the law of the place where it is found. If the Baltimore and Ohio Railroad Company is permitted by the State of Virginia to bring into its territory and there habitually to use and employ a portion of its movable personal property, and the

railroad company chooses so to do, it would certainly be competent and legitimate for the State to impose upon such property, thus used and employed, its fair share of the burdens of taxation imposed upon similar property used in the like way by its own citizens. And such a tax might be properly assessed and collected in cases like the present, where the specific and individual items of property so used and employed were not continuously the same, but were constantly changing, according to the exigencies of the business. In such cases the tax might be fixed by an appraisement and valuation of the average amount of the property thus habitually used, and collected by distress upon any portion that might at any time be found. Of course, the lawfulness of a tax upon vehicles of transportation used by common carriers might have to be considered in particular instances with reference to its operation as a regulation of commerce among the States, but the mere fact that they were employed as vehicles of transportation in the interchange of inter-state commerce would not render their taxation invalid. No question on that account arises in this case."

It was said by Mr. Justice Miller in *Davidson* vs. *New Orleans, 96 U. S., 97*, in speaking of the meaning of the phrase "due process of law," contained in the Fourteenth Amendment, and the difficulty of defining it in terms which would cover every exercise of power forbidden to the State and exclude those which are not, "There is wisdom, we think, in the ascertaining of the intent and application of such an important phrase in the Federal Constitution by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require with the reasoning on which such decisions may be founded. This Court is, after an experience of nearly a century, still engaged in defining the obligation of contracts, the regulation of commerce, and other powers conferred on the Federal government, or limitations imposed upon the States," and it was said by the same eminent judge, in *Fargo* v. *Michigan, 121 U. S., 230*, in speaking of the decisions of the Court upon the subject of the regulation of commerce, "the Court has not always employed the same language, and all the judges of the court who have written opinions for it may not have meant precisely the same thing" in this class of cases.

In view of this and of the fact that in this case the Court, of its own motion, has ordered a re-argument, it may be useful to review the decisions of the Court upon the commerce clause for the purpose of tracing the boundaries of the power of the States, as marked by the process of judicial inclusion and exclusion. In doing this, the cases in which the Court has examined and pronounced against the validity of the law of a State will be principally made use of, and it is believed that the examination will embrace the results of every case decided by the Court up to the beginning of the present term in which the invalidity of a State law has been declared.

The cases directly involving the commerce clause, frequently include, in the discussion of the principle involved, the citation of other cases within the clauses of the Constitution relating to imports, exports, and tonnage, and it has

sometimes happened that the same law has been condemned as a violation of more than one of the different clauses of the Constitution relating to commerce or navigation. Some of these cases will, therefore, be included in the examination of the subject.

It may have some significance to note that the first case upon the commerce clause, that of *Gibbons* v. *Ogden*, was decided in 1824, and that from that time to 1875 but eight cases were decided in which a State law was adjudged to be in contravention of the commerce clause of the Constitution. Since, and including 1875, thirty-two cases have been decided, and of these ten were decided in 1887 and 1888. Of the cases decided previous to 1875 *Brown* v. *Maryland* involved what was determined to be in effect a duty upon imports. *Sinnott* v. *Davenport* involved a question as to the registry of vessels. *Almy* v. *California* involved a question as to stamps upon bills of lading which were determined to be in effect a duty upon exports, and *Steamship Co.* v. *Port Wardens*, *Peete* v. *Morgan*, and *Cannon* v. *New Orleans* involved what was determined to be a duty upon tonnage of vessels. It thus appears that out of the eight cases, six involved other clauses of the Constitution than the commerce clause. The other two were the *Passenger Cases*, and the case of the *State Freight Tax*. The cases of *Crandall* v. *Nevada* and *Ward* v. *Maryland* are not here included because the decisions of the Court in those cases were put upon grounds other than of an infringement of the commerce clause.

Of cases arising under the contract clause, wherein a State law was adjudged to be invalid, forty-six were decided previous to 1875, and thirty-one since.

The cases upon the commerce clause, wherein a State law has been adjudged invalid, may be divided into two classes: I. Cases of direct regulation of commerce; II. Cases of indirect regulation of commerce.

I. Cases of direct regulation of commerce.

These are *Gibbons* v. *Ogden*, *9 Wheat.*, *1*, (*1824*,) wherein

was in question an exclusive privilege of navigation; *Sinnott* v. *Davenport, 22 Howard, 227,* (*1859,*) wherein was in question a law relating to the registry of vessels; *Foster* v. *Port Wardens, 94 U. S., 246,* (*1876,*) wherein was in question a law relating to surveys of hatches; *Hall* v. *DeCuir, 95 U. S., 485,* (*1877,*) wherein was in question a law relating to the accommodations of persons to be furnished by a carrier; *Railroad Co.* v. *Huson, 95 U. S., 465,* (*1877,*) wherein was in question a law relating to the driving of cattle through a State; *Pensacola Telegraph Co.* v. *Western Union Telegraph Co., 96 U. S., 1,* (*1877,*) wherein was in question a law conferring an exclusive telegraph franchise.

II. Cases of indirect regulation of commerce:

This indirect regulation, as shown by the cases, is invariably attempted through the exercise of the taxing power. Of these cases the following, which involve duties on imports, exports or tonnage, may be enumerated by themselves.

1. *Brown* v. *Maryland, 12 Wheaton, 419* (*1827*); *Almy* v. *California, 24 Howard, 169* (*1860*); *Steamship Co.* v. *Portwardens, 6 Wallace, 31* (*1867*); *State Tonnage Tax cases, 12 Wallace, 204* (*1870*); *Low* v. *Austin, 13 Wallace, 29* (*1871*); *Peete* v. *Morgan, 19 Wallace, 581, 1873*); *Cannon* v. *New New Orleans, 20 Wallace, 577* (*1874*); *Inman Co.* v. *Tinker, 94 U. S., 238* (*1876*); *Cook* v. *Pennsylvania, 97 U. S., 566* (*1878*). Some of these cases will be subsequently referred to.

2. The following cases also involve some special features: *Hays* v. *Pacific Mail Steamship Co., 17 Howard, 596* (*1854*); *St. Louis* v. *Ferry Co., 11 Wallace, 423* (*1870*); *Morgan* v. *Parham, 16 Wallace, 471* (*1872*); *Gloucester Ferry Co.* v. *Pennsylvania, 114 U. S., 196* (*1885*). These cases involve the attempted taxation as property of registered vessels of the United States engaged in navigation, and it was held in all of these cases, all but the last of which were decided in the first instance by Courts of the United States, that such vessels could not be taxed as property except at their home port, because the navigation laws of the United States fixed the *situs* of such vessels at such home ports, and it would therefore be a violation of

such statutes, constitutionally passed as the supreme law of the land, to fix their *situs* for any purpose at any other place.

3. In the following cases a tax on passengers, substantially at so much per head, was attempted to be imposed upon persons traveling from State to State or into the United States:

Passenger Cases, 7 Howard, 283, (1848); Henderson v. *Mayor, 92 U. S., 259, (1875); Commissioners* v. *North German Lloyd, 92 U. S., 259, (1875); Chy Lung* v. *Freeman, 92 U. S., 275, (1875); People* v. *Compagnie Generale Transatlantique, 107 U. S., 59, (1882); Crandall* v. *Nevada, 6 Wallace, 36, (1867).*

4. In the following case a specific tax of so much per ton was imposed upon freight carried interstate:

State Freight Tax, 15 Wall., 232, (1872).

5. In the following cases taxes were laid operating directly or specifically upon vessels, vehicles, means of communication, or commercial instrumentalities as such: *Almy* v. *California, 24 Howard, 169, (1860)*, wherein was in question a law requiring revenue stamps on bills of lading of gold exported; *Steamship Co.* v. *Portwardens, 6 Wallace, 31, (1867); Pete* v. *Morgan, 19 Wallace, 581, (1873); Canon* v. *New Orleans, 20 Wallace, 557, (1874); Inman Company* v. *Tinker 94 U. S., 238, (1876)*, involving a tonnage tax upon vessels; *Telegraph Co.* v. *Texas, 105 U. S., 460, (1881)*, involving a specific tax upon telegraphic messages; *Moran* v. *New Orleans, 112 U. S., 69, (1884)*, involving a license tax on tow boats; *Pickard* v. *Pullman Southern Car Co.*, and *Tennessee* v. *Pullman Southern Car Co., 117 U. S., 34, 51, (1886)*, involving a specific license or privilege tax on sleeping cars; *Robbins* v. *Shelby County Taxing District, 120 U. S., 489, (1887); Asher* v. *Texas, 128 U. S., 129, (1888); Stoughtenburgh* v. *Hemmick, 129, U. S., 141, (1888)*, involving a license tax upon drummers.

With reference to the foregoing enumeration, it may be noted that, for the purpose of illustration, similar cases involving the clauses relating to exports and tonnage before enumerated are included.

5. In the following cases a license tax, based upon an assumption of power to permit or prohibit the business of conducting the operations of commerce was involved:

Robbins v. *Shelby County, 120 U. S., 489, (1887); Asher* v. *Texas, 128 U. S., 129, (1888); Stoughtenburgh* v. *Hemmick, 129 U. S., 141, (1888); Pickard* v. *Pullman Co., 117 U. S., 34, (1886); Tennessee* v. *Pullman Co., 117 U. S., 51 (1886); Moran* v. *New Orleans, 112 U. S., 69 (1884), supra,* and *Leloup* v. *Mobile, 127 U. S., 640, 1888),* involving a license tax upon telegraph business. To these cases may be added the case of *Brown* v. *Maryland, 12 Wheat., 419 (1827).*

6. In the following cases there was in question a discriminating tax, in which the law was adjudged to be invalid because of its discriminative feature: *Welton* v. *Missouri, 91 U. S., 275 (1875),* discriminating tax on peddlers; *Tiernan* v. *Rinker, 102 U. S., 123 (1880),* discriminating license tax on liquor sellers; *Weber* v. *Virginia, 103 U. S., 344 (1880),* a discriminating license tax on sellers of foreign goods; *Walling* v. *Michigan, 116 U. S., 446 (1886),* a discriminating license tax on sellers of foreign goods; *Corson* v. *Maryland, 120 U. S., 503 (1887),* a discriminating license tax on sellers by samples; *Cook* v. *Pennsylvania, 97 U. S., 566 (1878),* a discriminating tax on the gross sales of auctioneers, (in this case perhaps the decision is not distinctly put upon the ground of discrimination;) *Guy* v. *Baltimore, 100 U. S., 434 (1879),* a discriminating wharfage tax; *Spraigue* v. *Thompson, 118, U. S., 90 (1886),* a discriminating pilotage law.

In connection with this class of cases the following may be mentioned, wherein the State law was adjudged to be valid: *Howe Machine Co.* v. *Gage, 100 U. S., 676 (1879),* a non-discriminating tax on peddlers; *Hinson* v. *Lott, 8 Wallace, 148 (1868),* a specific tax on spirituous liquors, both of foreign and domestic product. *Woodruff* v. *Parham, 8 Wallace, 123 (1868),* a uniform tax on sales.

7. The following are cases in which no regulation of commerce was intended or effected, but wherein the tax has been

adjudged invalid merely because a burden upon the business of carrying on interstate commerce: *Gloucester Ferry Co. v. Pennsylvania, 114 U. S., 196 (1885)*, was a case wherein a capital stock tax was attempted to be imposed by Pennsylvania upon a New Jersey corporation engaged in the business of maintaining a ferry across the Delaware river. The boats were registered vessels, and it was held that they were not property in Pennsylvania because their *situs* was fixed by the laws of the United States, and that the tax was therefore in substance a tax upon business, and that, as this business was exclusively interstate commerce, it could not be so taxed.

In connection with this case those of *St. Louis v. Ferry Co., 11 Wall, 423 (1870)*, and *Wiggins Ferry Co. v. East St. Louis, 107 U. S., 365 (1883)*, may be adverted to. In the former case a property tax was attemped to be laid on the boats of the company by the City of St. Louis, and it was held that as the boats were registered and their home port was East St. Louis their *situs* was there and they were therefore not "property within the city" of St. Louis. In the latter case a license tax on the same vessels imposed by East St. Louis was sustained, the decision being put upon the peculiar power of the States over ferries. In *Transportation Co. v. Wheeling, 99 U. S., 273 (1878)*, a property tax on steamboats imposed at the home port was sustained.

Philadelphia and Southern Mail Steamship Co. v. Pennsylvania, 122 U. S., 326 (1887,) was a case wherein a tax was attempted to be imposed upon the gross receipts of a steamship company engaged exclusively in interstate and foreign commerce. This was held to be a tax solely on the business of interstate commerce. *Ratterman v. Western Union Telegrapd Co., 127 U. S., 411 (1888)*, *Western Union Telegraph Co. v. Pennsylvania, 128 U. S., 39, (1888)*, were cases wherein a tax on the gross receipts of a telegraph company engaged in telegraphing from point to point within a State and from points within to points without or from points without

to points within a State was attempted to be imposed. So far as the tax was laid upon the gross receipts of interstate telegraph business it was adjudged to be invalid. *Fargo* v. *Michigan*, *121 U. S.*, *23* (*1887*), was similar to the foregoing, except that the receipts in question arose from carriage into or carriage out of a State.

These cases all involve substantially the same principle; that is, that a tax which is directly imposed upon, and which directly burdens, the business, as such, of carrying on inter-State commerce, cannot be sustained.

The present case falls within neither of the foregoing classes of cases. It involves no complication relating to imports, exports or tonnage, nor is the *situs* of the property fixed by Federal law as in the case of vessels. The tax is not upon passengers carried, nor upon freight, because transported; nor is it imposed specifically upon a vehicle, means of communication, or commercial instrumentality as such. The tax in question is not based upon an assumption of power to permit or prohibit the business in which the property is used. It is not discriminative, and it is not imposed upon the business, as such, of carrying on the operations of interstate commerce.

The tax is an indiscriminative property tax, imposed upon an *ad valorem* basis upon property found within the jurisdiction of the sovereignty. The property in question is employed in the operations of interstate commerce, but it is not taxed because so employed. The tax is in no wise governed by the manner of the employment of the property. It is imposed on property in general, without reference to the employment thereof in interstate commerce or otherwise. True, because of its employment the property is in Pennsylvania. That motive moves the owner of the taxable subject not the taxing power. The property is not taxed because it is brought into the State for any purpose, but because it is property within the State, and in legal contemplation permanently so, mingled with the mass of property

therein. It is not taxed because it is in transit. It is not in transit, but it carries those who are in transit. The [illegible] basis of the tax is the permanence, in legal contemplation, of the property. It is regarded, not as transitory, but by reason of the regularity, continuance and permanence, of the use, as fixed.

The case involves no such question as to whether the property is in commerce for transportation, as arose concerning the logs in *Coe* v. *Errol*, which was a case relating to the *status* of property rather than to its *situs;* that is to say, *status* as to whether in commerce or not in commerce for transportation. The case does not involve any question as to the domicile of the owner, for his tangible personal property may be taxed both where he is and where it is, excepting the property be vessels. The principles governing the taxation of these are peculiar, and bear no analogy to principles governing the taxation of other personality. Vessels employed upon public waters do not enter the State and mingle with its property. They have a port of registry, a domicile or residence, and a sort of independent legal personality and *status*.

This case is similar to that of *Western Union Telegraph Co.* v. *Massachusetts*, both in its material and immaterial facts. In that case the property of a foreign corporation was in question—so here; the property was in the State because engaged in State and interstate transportation—so here; the property was not taxed on account of its origin, ownership or use—so here; it was taxed like other property, upon the mileage basis—so here; the property was tangible property—so here. The sole element of difference is the question as to the *situs* of the property, springing out of the fact that in the Massachusetts case the property was immovable, while here it is movable, and it is contended that property having a *situs* of origin cannot lose that *situs* by leaving it for permanent employment elsewhere in the operations of interstate commerce. This is equivalent to a statement that the *situs* of property

engaged in interstate commerce cannot be changed, and the proposition is fully met by the opinion of the Court in *Marye v. Baltimore and Ohio Railroad Co.*

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